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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.

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Rules and Regulations

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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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1208

RIN 3124-AA17

National Security Information; Handling Classified Information

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board amends its regulations by adding Part 1208 to follow the procedural requirements of Executive Order (E.O.) 12356, National Security Information. The authority for these regulations is E.O. 12356, as amended, and the Information Security Oversight Office (ISOO) Directive No. 1.

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

SUPPLEMENTARY INFORMATION: E.O. 12356, National Security Information, effective April 2, 1982, and ISOO Directive No. 1, effective August 1, 1982, require that agencies which handle classified information issue implementing regulations to include information relating to their mandatory declassification program. The Merit Systems Protection Board (Board) does not have original classification authority; however, it occasionally receives information classified by other agencies. These regulations establish procedures for handling such information.

List of Subjects in 5 CFR Part 1208

Administrative practice and procedure; Classified information.

Therefore, 5 CFR is amended by adding Part 1208 as set forth below:

PART 1208—NATIONAL SECURITY INFORMATION PROCEDURES

Subpart A—General

Sec.
1208.1 Purpose.
1208.2 Definitions.

Subpart B—Oversight

1208.11 Responsibilities.
1208.12 Safeguarding information.
1208.13 Reproduction controls.
1208.14 Storage.
1208.15 Mandatory review for declassification.
1208.16 Employee education.

Authority: E.O. 12356, 47 FR 14874, April 6, 1982, and ISOO Directive No. 1, 47 FR 27837, June 25, 1982.

Subpart A—General

§ 1208.1 Purpose.

This subpart implements Executive Order (E.O.) 12356, 47 FR 14874, April 6, 1982, by prescribing the procedures by which classified information is managed. The Board does not have original classification authority but it occasionally receives information classified by other agencies.

§ 1208.2 Definitions.

(a) "Agency" has the meaning provided at 5 U.S.C. 552(e).

(b) "Information" means any information or material regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(c) "National security information" means information that has been determined pursuant to E.O. 12356 or any previous order to require protection against unauthorized disclosure and that is so designated.

(d) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

Subpart B—Oversight

§ 1208.11 Responsibilities.

(a) The Deputy Executive Director for Management is the Senior Agency Official for Information Security and is responsible for conducting an oversight program that ensures effective implementation of E.O. 12356.

(b) The Clerk of the Board is the Information Security Officer and implements a monitoring system to be sure that E.O. 12356 is effectively implemented. This includes: (1) Appointing Board officials as custodians of classified information; (2) developing an effective security education program to familiarize employees with E.O. 12356; and (3) establishing procedures for mandatory declassification review requests.

§ 1208.12 Safeguarding information.

Classified information is afforded a level of protection against unauthorized disclosure commensurate with its level of classification. Access to such information is restricted to those individuals with an authorized security clearance and a need to know.

§ 1208.13 Reproduction controls.

(a) Top Secret documents shall not be reproduced without the consent of the originator.

(b) Unless restricted by the originating agency, Secret and Confidential documents may be reproduced to the extent required by operational needs.

(c) If classified information is reproduced, the same accountability and controls imposed on the original document applies to the reproductions.

(d) The Information Security Officer will maintain records showing the number and distribution of copies on a log stored with the original documents.

§ 1208.14 Storage.

(a) Classified information is stored in security containers approved by the General Services Administration and located in the Office of the Clerk of the Board or other approved area.

(b) If access to the security container is controlled by a combination lock:

(1) The combination is changed whenever the equipment is placed in use; whenever a person knowing the combination no longer requires access to it; whenever a combination has been subjected to possible compromise; whenever the equipment is taken out of service; or at least once every year;

(2) Only the Information Security Officer or designees who hold proper security clearances will know the combination; and

(3) The combination is given the same classification as the material stored within the security container.

§ 1208.15 Mandatory review for declassification.

(a) *Requests.* Requests for mandatory review of national security information are sent in writing to the Information Security Officer, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. Requests are processed under paragraph (d) of this section.

(b) *Mandatory review.* Information is subject to mandatory review by the originating agency if:

(1) The request is made by a U.S. citizen or permanent resident alien, a Federal agency, or a state or local government; and

(2) The request describes the document or material containing the information with enough specificity to enable the Board to locate it with reasonable effort.

(c) *Exemptions from mandatory review.* Documents by the President, the White House staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to the President or acting on behalf of the President, are exempted from mandatory review for declassification.

(d) *Processing requirements.* The Board does not have original classification authority. Any classified documents in its custody are classified by another agency. The Board will refer copies of the request and the requested documents to the classifying agency for processing, and may, after consulting that agency, inform the requester of the referral.

(e) *Fees.* The Board may charge fees for search and review time required to process the request and for copying costs. These fees are charged in accordance with 5 CFR 1204.12 and 5 CFR 1205.16.

§ 1208.16 Employee education.

The Board has established a security education program to familiarize employees having access to classified information with the requirements of E.O. 12356 and its implementing directives and regulations.

Date: May 15, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-11924 Filed 5-17-89; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1d

Rural Labor; Immigration Reform and Control Act of 1986

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR Part 1d, which defines fruits, vegetables and other perishable commodities as prescribed by section 302(a) of the Immigration Reform and Control Act of 1986, Pub L. No. 99-603, 100 Stat. 3359, (hereinafter referred to as "the Act"). This rule will assist the Immigration and Naturalization Service (INS) in determining the special agricultural workers to be admitted into the United States for temporary residence.

EFFECTIVE DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Al French, Coordinator of Agricultural Labor Affairs, Economic Analysis Staff, Room 227-E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250-1400; telephone (202) 447-4737.

SUPPLEMENTARY INFORMATION: Section 302(a) of the Act directed the Secretary of Agriculture to publish regulations defining the fruits, the vegetables, and the other perishable commodities in which field work related to planting, cultural practices, cultivating, growing, and harvesting will be considered "seasonal agricultural services." On June 1, 1987, the United States Department of Agriculture (USDA) published its final rule (52 CFR 20372), including the determination that seed was not a fruit, vegetable, or other perishable commodity within the meaning of the Act. This final rule redefines seed as it applies to lettuce seed.

On October 24, 1988, at 53 FR 41603-41604, USDA requested public comment on a proposed rule that examined whether the commodity lettuce seed meets the definition of "other perishable commodities." The comment period closed November 23, 1988. USDA received no comments on the proposed rule during the comment period.

Section 1d.5 of the rule defines "fruits" to mean "the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence." Section 1d.10 defines vegetables to mean "the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert." Section 1d.7 of the rule defines "other perishable commodities" to mean "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands." Section 1d.3 of the rule defined "critical and unpredictable labor demands" to mean "that the period during which field work is to be initiated cannot be predicted with any certainty 60 days in advance of need."

Since seed crops are not human edible commodities they do not fit within the meaning of either fruits or vegetables. However, human edible seeds, such as sunflower seed, do fit within the definition of "fruits." The rule did not recognize seed as a commodity that was either included or excluded as an "other perishable commodity." In the explanation of the final rule, it was explained that several comments had been received as to various seed crops but that "[n]one of the comments was so specific or informative as to present a convincing case that any of these seed crops meet the standards for criticality or unpredictability which we have deemed necessary to measure the inclusion or exclusion of any commodity as perishable." 52 FR 20375. However, upon request and the submission of appropriate information and explanation, we have considered the labor requirements of lettuce seed production and determined that it meets the requisite standard of critical and unpredictable labor demands necessary for inclusion as an "other perishable commodity."

The production of lettuce seed requires all of the activities necessary for the production of edible lettuce plus additional critical and unpredictable labor demands regarding field work with respect to the harvesting and drying of the seed. Lettuce for seed is planted as seed or small transplants. Irrigation is required for germination and growth. The plants must be thinned and weeded. The heads of the lettuce are removed so that the plants will branch out and ultimately produce seed. All of these activities require field work performed by manual laborers. The timing of the deheading is very critical and unpredictable as the farmer must determine when the heads are at proper maturity and this cannot be forecast with any degree of certainty 60 days in advance. If the deheading is done too early, it must be done again; if several days too late the plant will not produce seeds that will germinate. At the proper

time the plants are cut from their roots and laid upon canvas to dry. During the drying operation they must be turned 2 to 3 times a day. After drying, the plants are beaten to release the seed which is then collected on the canvas. Alternatively, some lettuce seed is harvested by shaking the seed into buckets and then putting the seed out to dry. In either case, field work by manual laborers must be performed to harvest the seed within a few days of proper maturity. If harvested too late, the germination of the seeds is substantially reduced; if harvested too early, the seed is too immature. The timing of the harvest is unpredictable due to changing climatic conditions and cannot be forecast with any degree of certainty 60 days in advance.

After consideration of the field work required in the planting, cultural practices, cultivation, growing and harvesting, USDA has determined that lettuce seed entails critical and unpredictable labor demands and that it should be included as an other perishable commodity.

After thorough review of labor demands with respect to lettuce seed field activities from planting through harvesting and the information supplied with the request for the inclusion of this commodity, USDA has determined that lettuce seed field work is subject to critical and unpredictable labor demands. Thus, USDA has determined that lettuce seed qualifies for inclusion as an "other perishable commodity."

Regulatory Impact

The Assistant Secretary for Economics has reviewed this rule in accordance with Executive Order No. 12291 and has determined that it is not a major rule. Under the framework of the Act, the INS will use this rule to assist it in determining the special agricultural workers which will be admitted into the United States for temporary residence. Thus, the primary benefits of this rule are internal to the operation of the United States government.

This action, in and of itself, will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individuals, Federal, state, or local government agencies, or geographic regions; or have a significant effect on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule examines whether lettuce seed meets the definition of "other perishable commodities" for purposes of clarifying the term "seasonal agricultural services" as it relates to lettuce seed. The rule does not contain any compliance or reporting requirements, or any timetables. The rule will assist the INS in determining the special agricultural workers to be admitted for temporary residence. Thus, the rule, in and of itself, will have no significant effect upon small entities.

Paperwork Reduction Act

This rule does not require additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3502, et seq.) are inapplicable.

National Environmental Policy Act

This rule will not have an impact upon the environment.

List of Subjects in 7 CFR Part 1d

Immigration, Rural Labor.

Accordingly, Part 1d, Title 7, Code of Federal Regulations is revised as follows:

PART 1d—RURAL LABOR—IMMIGRATION REFORM AND CONTROL ACT OF 1986—DEFINITIONS

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

Authority: 8 U.S.C. 1160.

2. Section 1d.7 is revised to read as follows:

§ 1d.7 Other perishable commodities.

"Other perishable commodities" mean those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of field work, and have critical and unpredictable labor demands. This is limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties, lettuce seed, spanish reeds (arundo donax), spices, sugar beets, and tobacco. This is an exclusive list, and anything not listed is excluded. Examples of commodities that are not included as perishable commodities are animal aquacultural products, birds, dairy products, earthworms, fish including oysters and shellfish, forest products, fur bearing animals and rabbits, hay and other forage and silage, honey, horses and other equines, livestock of all kinds including animal specialties, poultry and poultry products, sod, sugar cane, wildlife, and wool.

Done at Washington, DC, this 11th day of May, 1989.

Jack Parnell,

Deputy Secretary.

[FR Doc. 89-11890 Filed 5-17-89; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 54

[No. LS-89-101]

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends section 54.27 of the regulations governing the grading and certification of meats, prepared meats, and meat products by increasing the hourly fee rates for voluntary Federal meat grading and certification services. The hourly fees will be adjusted by this final rule to reflect the increased cost of providing service and to ensure that the Federal meat grading and certification program is operated on a financially self-supporting basis as required by law.

EFFECTIVE DATE: July 2, 1989.

FOR FURTHER INFORMATION CONTACT: Eugene M. Martin, Chief, Meat Grading and Certification Branch, Livestock and Seed Division, AMS, USDA, Rm. 2638-S, P.O. Box 96456, Washington, DC 20090-6456. (202-382-1113).

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under the USDA procedures established to implement E.O. 12291 and was classified as a nonmajor proposed rule pursuant to section 1(b) (1), (2), and (3) of that Order. Accordingly, a regulatory impact analysis is not required. This action was also reviewed under the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*). The Administrator of the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities. The changes in the hourly fee rates are necessary to recover the costs of providing voluntary Federal meat grading and certification services. The cost per unit of meat grading and certification services to the industry will continue to be approximately $0.0015 per pound.

Background

The Secretary of Agriculture is authorized by the Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The AMA also provides for the collection of fees from users of Federal meat grading and certification services that are approximately equal to the costs of providing these services. The hourly fees for service are established by equitably distributing the projected annual program operating costs over the estimated hours of service—revenue hours—provided to users of the service. Program operating costs include salaries and fringe benefits of meat graders, supervision, travel, training, and all administrative costs of operating the program. Revenue hours include base hours—service performed between 6 a.m. and 6 p.m., Monday through Friday; premium hours—service performed after 6 p.m. and before 6 a.m., or in excess of 8 hours per day, Monday through Friday, 6 a.m. to 6 p.m., and anytime on Saturday or Sunday; and holiday hours—service performed on Federal legal holidays. As program operating costs and/or revenue hours change, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law.

Since February 12, 1986, the date of the last hourly fee change, program operating costs have significantly increased. The major contributing factors have been two congressionally mandated salary increases for Federal employees—a 3-percent pay increase effective January 1, 1987, and a 2-percent pay increase effective January 1, 1988. Together, these pay increases have raised program costs by approximately $700,000. In 1986, the Agency significantly reduced the program's operating costs by restructuring its headquarters and field offices and reducing other related overhead operating expenses. The restructuring and related cost reductions and ongoing improvements in operating efficiencies have allowed the program to absorb the $700,000 pay increases in 1987 and 1988 and other inflationary increases since the last hourly fee change.

Although operating efficiency has improved, the program is unable to absorb any additional increases in program operating costs without corresponding increases in the hourly fee rate or significant reductions in program services. Employee salary and fringe benefits are major program costs that account for approximately 80 percent of the total operating budget. In fiscal year 1989, the Agency is faced with the following increases in program operating expenses: (1) A congressionally mandated, Governmentwide salary increase of 4.1 percent effective January 1, 1989; (2) a 28.3-percent increase in the Agency's contribution to the Federal Enployees Health Benefits Program (applicable to all Government Agencies) effective January 1, 1989; (3) a 10-percent, Governmentwide increase in travel entitlements effective in October 1988; and (4) a projected inflationary cost increase of 3.8 percent for fiscal year 1989. The Agency has determined that due to the aforementioned increases in program operating costs in fiscal year 1989, the program will incur over an $800,000 loss unless the hourly fee rates are appropriately adjusted.

The restructuring and related reduction in program operating costs implemented by the Agency in 1986 were accomplished without adversely affecting the Agency's ability to maintain the effectiveness, integrity, and credibility of national grading and certification services. However, any further reductions in employee supervision, training, or travel at this time would affect the Agency's ability to ensure the continued accurate and uniform application of the U.S. grade standards and specifications nationwide. Any reductions in the accuracy or uniformity of service would, most likely, have an adverse impact on the orderly marketing of red meat and on the uniform identification of meat and meat products available to consumers. Consequently, the Agency must increase the hourly fee rates for meat grading and certification services.

Comments

On February 23, 1989, the Agency published in the **Federal Register** (54 FR 7431) a proposed rule to increase the fees for Federal meat grading and certification services. This proposed rule was published with requests for comments as a means for providing full public participation in the rulemaking process. Comments on this proposed rule were requested by March 23, 1989. During the 30-day comment period, the Agency received three comments in response to the proposed rule. One letter was received from a meat association, one letter from a State department of livestock, and one letter from a meat processor.

Discussion of Comments

The comments reflected an overall dissatisfaction with the fee increase and expressed the view that any increase would only further burden the meat industry and may render the use of meat grading and certification services cost-prohibitive. The comments contained general observations on increasing the fee rates and suggested the Agency more effectively cross-utilize its employees to lessen the financial burden on the meat industry.

The Agency acknowledges the need for and importance of providing meat grading and certification services in an efficient and cost-effective manner. During the past several years, the Agency has reduced both the direct and indirect costs and improved the efficiency of meat grading and certification services to help offset increasing costs. However, program operating costs have significantly increased over and above the cost efficiencies implemented by the Agency since February 1986, which was the date of the last hourly fee change. The major contributing factors have been two congressionally mandated salary increases for Federal employees—a 3-percent pay increase effective January 1, 1987, and a 2-percent pay increase effective January 1, 1988. Together, these pay increases have raised program costs by approximately $700,000. In 1986, the Agency significantly reduced the program's operating costs by restructuring its headquarters and field offices and reducing other related overhead operating expenses. The restructuring and related cost reductions and ongoing improvements in operating efficiencies have allowed the program to absorb the $700,000 pay increases in 1987 and 1988 and other inflationary increases since the last hourly fee change.

Although operating efficiency has improved, the program is unable to absorb any additional increases in program operating costs without corresponding increases in the hourly fee rate or significant reductions in program services. The Agency has determined that due to the substantial increases in program operating costs in fiscal year 1989, the program will incur over an $800,000 loss unless the hourly fee rates are appropriately adjusted.

Two of the commenters expressed the view that any increase in fee rates may render meat grading and certification services economically unfeasible for some users of the service. Additionally, one commenter indicated the current charges were excessive in relation to the

benefits received from meat grading and certification services and any increase in fee rates would only further burden the consumer.

The Agency believes that the financial impact of the current fee rates and the fee rate increase on the industry and the consumer will be minimal. Even though meatpackers and meat processors will pay more per hour for the service, the meat industry as a whole will be using less total hours of service. However, since the total volume of meat graded and certified is expected to remain about the same, the cost per unit for meat grading and certification services to the industry and ultimately the consumer will continue to be approximately $.0015 per pound.

One commenter urged the Agency to explore more effective cross-utilization of employees among the various Agencies of the Department of Agriculture to lessen the impact of the fee rate increase. During the past several years, the Agency has significantly increased the cross-utilization of employees among its own divisions, as well as with other Federal and State agencies. The increased use of employee cross-utilization has enabled the Agency to provide meat grading and certification services to many areas and locations on a more cost-effective basis. The Agency plans to continue the cross-utilization of employees among its own divisions and with other Federal and State agencies to provide cost-effective meat grading and certification services whenever practical and possible.

In view of the foregoing considerations, it has been decided that the base hourly rate for commitment applicants for voluntary Federal meat grading and certification services will be increased from $27.40 to $28.80. A commitment applicant is a user of the service who agrees, by commitment or agreement memorandun, to the use of a meat grader for 8 consecutive hours per day, Monday through Friday, between the hours of 6 a.m. and 6 pm., excluding legal holidays. The base hourly rate for noncommitment applicants for voluntary Federal meat grading and certification services will be increased from $29.80 to $31.20 and would be charged to applicants who utilize a meat grader for 8 consecutive hours or less per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The premium hourly rate for all applicants will be increased from $35.40 to $36.80 and would be charged to users of the service for the hours when a meat grader is utilized in excess of 8 hours per day, between the hours of 6 a.m. and 6 p.m., and for hours worked from 6 p.m. to 6 a.m., Monday through Friday, and for any time worked on Saturday and Sunday, except on legal holidays. The holiday rate for all applicants will be increased from $54.80 to $57.60 and would be charged to users of the service for all hours worked on legal holidays.

Accordingly, the section of the regulations appearing in 7 CFR Part 54 relating to hourly fees for Federal meat grading and certification of meats, prepared meats, and meat products is amended as set forth below:

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification, Beef, Veal, Lamb, Pork.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624).

2. 7 CFR Part 54 is amended as follows:

§ 54.27 [Amended]

(a) Section 54.27(a), sentence 3, change the following: "$29.80" to "$31.20"; "$35.40" to "$36.80"; and "$54.80" to "$57.60".

(b) Section 54.27(b), sentence 2, change the following: "$27.40" to "$28.80"; "$35.40" to "$36.80"; and "$54.80" to "$57.60".

Done at Washington, DC, on May 12, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-11891 Filed 5-17-89; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Rice

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the United States Standards for Rough Rice by adding a separate category for heat-damaged kernels and redefining the special grade "weevily" to the more inclusive and meaningful term "infested." Additionally, FGIS is revising the United States Standards for Rough Rice, Brown Rice for Processing, and Milled Rice by (1) incorporating the insect infestation tolerances in the standards, (2) revising the rounding procedures as stated in the sections on percentages to more generally accepted mathematical procedures, (3) eliminating many of the footnotes and references to footnotes throughout the standards and incorporating the information into the text of the standards, and (4) making other miscellaneous nonsubstantive changes to simplify and provide for uniform provisions and language in the standards.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454. Telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Final Action

On January 7, 1988, FGIS published in the **Federal Register** (53 FR 411) a request for public comment on the review of the United States Standards for Rice and specific issues identified by interested parties. The request for comments explained that the Rice Millers' Association (RMA) had requested that FGIS review the heat-damaged kernels factor limits for rough rice and that FGIS was reviewing the heat-damaged kernels factor limits for brown rice for processing (brown rice), and the mathematical rounding

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), concerning inspections and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

procedures. The objective of this review made in compliance with the requirements for periodic review of regulations was to ensure that the standards continue to serve the needs of the marketplace to the greatest extent possible.

Interested parties were invited to participate in the rulemaking process by submitting written comments. During the 45-day comment period, one comment was received from a rice miller. The commenter suggested revising the factor limits for total seeds and heat-damaged kernels (TS&HT) and heat-damaged kernels and objectionable seeds (HT&OBS) in rough rice and brown rice to equal the milled rice standards. The commenter stated that HT&OBS limits for rough and brown rice far exceed the limits found in the milled rice standard, making it virtually impossible to process any specific grade level of rough rice or brown rice into an equivalent grade of milled rice. In addition, in a later correspondence, the RMA also recommended modifying the rough and brown rice standards to better reflect the milled rice standard. However, the RMA recommended only revising the number of heat-damaged kernels allowed in rough rice and brown rice to equal milled rice.

In the October 26, 1988, **Federal Register** (53 FR 43213), FGIS proposed to revise the United States Standards for Rough Rice by adding a separate category for heat-damaged kernels and redefining the special grade "weevily" to the more inclusive and meaningful term "infested." Additionally, FGIS proposed to revise the United States Standards for Rough Rice, Brown Rice for processing, and Milled Rice by (1) incorporating the insect infestation tolerances in the standards, (2) revising the rounding procedures as stated in the sections on percentages to more generally accepted mathematical procedures, (3) eliminating many of the footnotes and references to footnotes throughout the standards and incorporating the information into the text of the standards, and (4) making other miscellaneous nonsubstantive changes to simplify and provide for uniform provisions and language in the standards. Comments were to be submitted by November 26, 1988. Written comments were received from six organizations or firms concerning the proposed changes with some supporting the proposed changes and others opposing the changes. The comments indicated a disparity of opinion concerning the potential impact of the proposed rule. However, the basis for these opinions made in opposition were unclear.

Accordingly, it was determined that additional public input could prove beneficial and that all interested persons, including the commenters, should be afforded more time to consider the proposal and its potential impact. Therefore, as published in the **Federal Register** on February 27, 1989 (54 FR 8201), the comment period was reopened. Additional comments on the proposal were accepted through March 10, 1989. Only one additional comment, submitted by a previous commenter on behalf of two previous commenters, was received.

Heat-Damaged Kernels

FGIS proposed to add a special category for heat-damaged kernels in the rough rice standards. Heat-damage in rice is an occasional, controllable problem. Establishment of a separate category for heat-damaged kernels in rough rice will encourage better handling practices. It also provides a basis for establishing incentives to encourage the marketing of quality rice. Based on available information, this action will neither affect the current price of rice nor the quantity of rice available at the various grade levels.

Comments received from the RMA, Riceland Foods, and Supreme Rice Mill supported the proposal as written. The American Farm Bureau Federation and its affiliate, the Louisiana Farm Bureau Federation, opposed the proposed change initially, but during the reopened comment period, withdrew their opposition and stated their full support for the proposal.

The current standards for rough rice has one grade factor HT&OBS which is determined on a milled rice basis. That is, rough rice is dehulled and milled in the laboratory to simulate the commercial milling process, and then the milled portion is analyzed for HT&OBS. Adding a separate category for heat-damaged kernels equivalent to the milled rice HT&OBS factor limits will provide rice mills a reasonable opportunity to produce an equivalent quality of milled rice because they will only need to remove objectionable seeds from the rough rice, rather than HT&OBS. FGIS recognizes that the technology is readily available and at a reasonable cost to remove objectionable seeds from rough rice during the normal milling process but removing heat-damaged kernels is more difficult and expensive. Also, heat damage occurs as a result of heating due to improper storage or the parboiling of rice, conditions generally more controllable than field weeds. Furthermore, the addition of a separate heat-damaged kernel category may enable the marketplace to reward those producers who exercise reasonable and prudent care in storing rice. Accordingly, this change is adopted in the final rule.

Infestation

FGIS also proposed redesignating the rough rice special grade "weevily" to "infested." The term "infested" more appropriately describes rough rice containing live insects injurious to stored rice, whereas the term "weevily" connotes a specific insect species, e.g., *Sitophilus* spp. "Infested" rough rice will be defined as rough rice found to contain live insect infestation above a threshold level. Other insects, in addition to types of weevils, are included within the scope of the term infested rough rice. All commenters who addressed this issue favored this change. Accordingly, this change is adopted by this final rule.

In addition, FGIS is redefining the tolerances for insects injurious to stored rough rice according to sampling designations as follows: (1) Representative sample, (2) Lot as a whole (stationary), and (3) Sample as a whole during continuous loading/unloading. These tolerances are the same or similar to those frequently applied by FGIS on similar products. All commenters who addressed this issue favored this change.

For rough rice, the representative sample will include the work portion and the file sample if needed, and when available. The lot represented by the work portion (except lots sampled during continuous loading/unloading) will be considered infested if it contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice. Lot as a whole (stationary) will be infested if two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice, or 15 or more live Angoumois moths or other live moths injurious to stored rice are found in, on, or about the lot. The lot represented by the sample as a whole during continuous loading/unloading will be infested if two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice are found in a component sample. The minimum sample size is 500 grams per each 100,000 pounds of rice.

FGIS is also incorporating the insect tolerances for brown rice and milled rice in the appropriate grade tables. For brown rice, two or more live insects injurious to stored rice is considered Sample grade. For milled rice, two or more live or dead insects injurious to stored rice is considered Sample grade. These tolerances are presently in FGIS instructions and have been applied to rice inspection for several years.

Rounding

It was also proposed that FGIS change its current procedure for rounding percentages for all rice standards. The majority of commenters favored this proposal. However, Farmers Rice Milling Company opposed the proposal, stating that it will adversely affect processors.

The Service believes that the impact of this change will be beneficial because it is consistent with rounding procedures performed by calculators and in computer applications. It is also a more generally accepted mathematical rounding procedure and will facilitate the understandability and usage of the standards. Accordingly, the rounding procedures are adopted as proposed.

The current rounding procedures for percentages provide that when a figure to be rounded is followed by a figure greater than 5, the figure is rounded up to the next higher figure, e.g., 0.46 is reported as 0.5; when a figure to be rounded is followed by a figure less than 5, the figure is to be retained, e.g., 0.44 is reported as 0.4; when figures that are even are followed by the figure 5, the even figure is retained, e.g., 0.45 is reported as 0.4; and when a figure is odd and followed by a figure of 5, the figure is rounded to the next higher even figure, e.g., 0.35 is reported as 0.4.

The rounding procedures as proposed and contained in this final rule provide that a figure to be rounded followed by a 5 or a figure greater than 5 be rounded up to the next higher figure, e.g., report 0.35 as 0.4, 6.46 as 6.5. If the figure is followed by a number less than 5, the figure is retained, e.g., report 8.34 as 8.3.

Miscellaneous Changes

This final rule removes most footnotes and references to footnotes from the standards. The information contained in the footnotes is included, as appropriate, within the text of the standards. Footnotes contained within the body of the grade tables were retained. Also, this final rule removes as necessary §§ 68.204, 68.254, and 68.304 titled *Temporary modifications in equipment and procedures*, and adds a section in each subpart giving the mailing address where instructions and information may be obtained from the Service. In addition to the changes previously discussed, the table which appears in the *Code of Federal Regulations* at 7 CFR 68.210, *Grades and grade requirements for the classes of rough rice* was corrected to accurately reflect the provisions of the final rule published August 12, 1977 (42 FR 40871).

Other miscellaneous nonsubstantive changes have been made for clarity. This action is effective July 1, 1989, to coincide with the beginning of the crop year.

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Rice.

For reasons set forth in the preamble, 7 CFR Part 68 is amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Subpart C—United States Standards for Rough Rice

Subpart D—United States Standards for Brown Rice for Processing

Subpart E—United States Standards for Milled Rice

2. Footnote 1 is removed from Subparts C, D, and E headings and the following statement is added directly below each Subpart heading to read as follows:

Note to the Subpart: Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

§§ 68.202, 68.203, 68.207, 68.208, 68.252, 68.253, 68.255, 68.258, 68.259, 68.302, 68.303, 68.305, 68.308 and 68.315 [Amended]

3. Footnote 2 is removed from §§ 68.202(m), 68.203, 68.207, 68.208, 68.252(o), 68.253, 68.255, 68.258, 68.259, 68.302(m), 68.302(y), 68.303, 68.305, 68.308, and 68.315(a).

§§ 68.203, 68.207, 68.208, 68.258, 68.259 and 68.308 [Amended]

4. Footnote 3 is removed from §§ 68.203, 68.207, 68.208, 68.258, 68.259, and 68.308.

§ 68.202 [Amended]

5. Section 68.202(m) is amended by removing "set forth in the Rice Inspection Handbook" at the end of the last sentence and adding "prescribed in FGIS instructions" in its place

§ 68.203 [Amended]

6. Section 68.203 is amended by removing "set forth in the Rice Inspection Handbook" and "set forth in the Rice Inspection Handbook HG 918–11" references and adding "prescribed in FGIS instructions" in both places.

§ 68.204 [Removed]

§§ 68.205 and 68.206 [Redesignated as §§ 68.204 and 68.205 respectively]

7. Section 68.204 is removed and §§ 68.205 and 68.206 are redesignated as §§ 68.204 and 68.205, respectively.

§ 68.207 [Redesignated as 68.206 and Amended]

8. Section 68.207 is redesignated as § 68.206 and amended by removing "the Rice Inspection Handbook, and the Equipment Manual" and adding "FGIS instructions" in its place.

§ 68.208 [Redesignated as § 68.207 and Amended]

9. Section 68.208 is redesignated as § 68.207 and amended by removing "the Rice Inspection Handbook" and adding "FGIS instructions" in its place.

§ 68.209 [Redesignated as § 68.208]

10. Section 68.209 is redesignated as § 68.208 and revised to read as follows:

§ 68.208 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.34 as 8.3 and 1.22 as 1.2.

(b) *Recording.* All percentages, except for milling yield, are stated in whole and tenth percent to the nearest tenth percent. Milling yield is stated to the nearest whole percent.

11. A new § 68.209 is added to read as follows:

§ 68.209 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090–6454, or any field office or cooperator.

12. Section 68.210 is revised to read as follows:

BILLING CODE 3410-EN-M

GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS

§ 68.210 Grades and grade requirements for the classes of rough rice. (See also § 68.212.)

Grade	Maximum limits of--							Color requirements 1/
	Seeds and heat-damaged kernels			Red rice and damaged kernels (singly or combined) (Percent)	Chalky kernels 1/			
	Total (singly or combined) (Number in 500 grams)	Heat-damaged kernels and objectionable seeds (Number in 500 grams)	Heat-damaged kernels (Number in 500 grams)		In long grain rice (Percent)	In medium or short grain rice (Percent)	Other types 2/ (Percent)	
U.S. No. 1	4	3	1	0.5	1.0	2.0	1.0	Shall be white or creamy.
U.S. No. 2	7	5	2	1.5	2.0	4.0	2.0	May be slightly gray.
U.S. No. 3	10	8	5	2.5	4.0	6.0	3.0	May be light gray.
U.S. No. 4	27	22	15	4.0	6.0	8.0	5.0	May be gray or slightly rosy.
U.S. No. 5	37	32	25	6.0	10.0	10.0	10.0	May be dark gray or rosy.
U.S. No. 6	75	75	75	15.0 3/	15.0	15.0	10.0	May be dark gray or rosy.
U.S. Sample grade--								

U.S. Sample grade shall be rough rice which:

(a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6, inclusive; or

(b) Contains more than 14.0 percent of moisture; or

(c) Is musty, or sour, or heating; or

(d) Has any commercially objectionable foreign odor; or

(e) Is otherwise of distinctly low quality.

1/ For the special grade Parboiled rough rice, see § 68.212(b).

2/ These limits do not apply to the class Mixed Rough Rice.

3/ Rice in grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.

BILLING CODE 3410-EN-C

13. Section 68.212 is amended by removing § 68.212(c); redesignating § 68.212(a) and (b) as (b) and (c); and adding a new paragraph § 68.212(a) to read as follows:

§ 68.212 Special grades and requirements.

* * * * *

(a) *Infested rough rice.* Tolerances for live insects for infested rough rice are defined according to sampling designations as follows:

(1) *Representative sample.* The representative sample consists of the work portion, and the file sample if needed and when available. The rough rice (except when examined according to paragraph (a)(3) of this section will be considered infested if the representative sample contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice or five or more other live insects injurious to stored rice.

(2) *Lot as a whole (stationary).* The lot as a whole is considered infested when two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice, or 15 or more live Angoumois moths or other live moths injurious to stored rice are found in, on, or about the lot.

(3) *Sample as a whole during continuous loading/unloading.* The minimum sample size for rice being sampled during continuous loading/unloading is 500 grams per each 100,000 pounds of rice. The sample as a whole is considered infested when a component (as defined in FGIS instructions) contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice.

* * * * *

14. Section 68.213 is revised to read as follows:

§ 68.213 Special grade designation.

The grade designation for infested, parboiled, or smutty rough rice shall include, following the class, the word(s) "Infested," "Parboiled Light," "Parboiled," "Parboiled Dark," or "Smutty," as warranted, and all other information prescribed in § 68.211.

§ 68.252 [Amended]

15. Section 68.252(o) is amended by removing "set forth in the Rice Inspection Handbook" in the last sentence and adding "prescribed in FGIS instructions" in its place.

§ 68.253 [Amended]

16. Section 68.253 is amended by removing "set forth in the Rice Inspection Handbook" in the last sentence and adding "prescribed in FGIS instructions" in its place.

§ 68.254 [Removed]

17. Section 68.254 is removed.

§ 68.255 [Redesignated as § 68.254 and Amended]

18. Section 68.255 is redesignated as § 68.254 and amended by removing "set forth in the Rice Inspection Handbook" and adding "prescribed in FGIS instructions" in its place.

§§ 68.256 and 68.257 [Redesignated as §§ 68.255 and 68.256 Respectively]

19. Section 68.256 and 68.257 are redesignated as §§ 68.255 and 68.256, respectively.

§ 68.258 [Redesignated as § 68.257 and Amended]

20. Section 68.258 is redesignated as § 68.257 and amended by removing "the Rice Inspection Handbook and the Equipment Handbook" and adding "FGIS instructions" in its place.

§ 68.258 [Redesignated From § 68.259]

21. Section 68.259 is redesignated as § 68.258 and amended by removing "the Rice Inspection Handbook" at the end of the first sentence and adding "FGIS instructions" in its place.

§ 68.260 [Redesignated as § 68.259]

22. Section 68.260 is redesignated as § 68.259 and revised to read as follows:

§ 68.259 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure, e.g., report 8.34 as 8.3 and 1.22 and 1.2.

(b) *Recording.* All percentages, except for milling yield, are stated in whole and tenth percent to the nearest whole percent. Milling yield is stated to the nearest whole percent.

23. A new § 68.260 is added to read as follows:

§ 68.260 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090–6454, or any field office or cooperator.

§ 68.261 [Amended]

24. Section 68.261 is amended by adding "two or more" after "(f) contains" in the table.

§ 68.302 [Amended]

25. The introductory texts of § 68.302(d)(5), (d)(6), and (d)(7) are amended by removing "§§ 68.303 and 68.304" in each paragraph and adding "§ 68.303" in its place.

26. Section 68.302(m) is amended by removing "set forth in the Rice Inspection Handbook" and adding "prescribed in FGIS instructions" in its place.

27. Section 69.302(y) is amended by removing "set forth in the Equipment Handbook" and adding "prescribed in FGIS instructions" in its place.

§ 68.303 [Amended]

28. Section 68.303 is amended by removing "set forth in the Rice Inspection Handbook" and adding "prescribed in FGIS instructions" in its place.

§ 68.304 [Removed]

29. Section 68.304 is removed.

§ 68.305 [Redesignated as § 68.304 Amended]

30. Section 68.305 is redesignated as § 68.304 and amended by removing "set forth in the Rice Inspection Handbook" and adding "prescribed in FGIS instructions" in its place.

§§ 68.306 and 68.307 [Redesignated as §§ 68.305 and 68.306 Respectively]

31. Sections 68.306 and 68.307 are redesignated as §§ 68.305 and 68.306, respectively.

§ 68.308 [Redesignated as §§ 68.307 and Amended]

32. Section 68.308 is redesignated as § 68.307 and amended by removing "the Rice Inspection Handbook" and adding "FGIS instructions" in its place.

§ 68.309 [Redesignated as § 68.308]

33. Section 68.309 is redesignated as § 68.308 and revised to read as follows:

§ 68.308 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher

figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure, e.g., report 8.34 as 8.3 and 1.22 and 1.2.

(b) *Recording.* The percentage of broken kernels removed by a 5 plate in U.S. Nos. 1 and 2 Milled Rice and the percentage of objectionable seeds in U.S. No. 1 Brewers Milled Rice is reported to the nearest hundredth percent. The percentages of all other factors are recorded to the nearest tenth of a percent.

34. A new § 68.309 is added to read as follows:

§ 68.309 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090–6454, or any field office or cooperator.

§ 68.310 [Amended]

35. Section 68.310 is amended by adding "two or more" after "(f) contains" in the table.

§ 68.311 [Amended]

36. Section 68.311 is amended by adding "two or more" after "(f) contains" in the table.

§ 68.312 [Amended]

37. Section 68.312 is amended by adding "two or more" after "(g) contains" in the table.

§ 68.313 [Amended]

38. Section 68.313 is amended by adding "two or more" after "(h) contains" in the table.

§ 68.315 [Amended]

39. Section 68.315(a) is amended by removing "according to commercially accepted practice" and adding "as defined in the regulation issued pursuant to the Federal Food, Drug, and Cosmetic Act at 21 CFR 130.3(d)" in its place.

40. Section 68.315(d) is amended by removing "§ 68.307" in the first sentence and adding § 68.306" in its place.

Date: April 6, 1989.

W. Kirk Miller,

Administrator.

[FR Doc 11948 Filed 5–17–89; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-89-044]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Temporary Relaxation of Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments:

SUMMARY: This rule relaxes the minimum size requirement for shipments of domestic and imported white seedless grapefruit from size 48 (3 9/16 inches in diameter) to size 56 (3 5/16 inches in diameter). In addition, the rule relaxes the minimum external grade requirement for domestic and import shipments of pink and white seedless grapefruit from Improved No. 2 to U.S. No. 2 Russet. Also, the rule relaxes the minimum grade requirement for domestic shipments of Valencia and other late type oranges from U.S. No. 1 to U.S. No. 1 Golden. The grade, size, and maturity of the remaining 1988–89 season Florida crop, and market demand conditions for these fruits warrant these relaxations.

DATES: The grapefruit grade and size relaxations are effective for the period May 15, 1989, through August 20, 1989; and the Valencia orange grade relaxation is effective for the period July 1, 1989, through September 24, 1989. Comments which are received by June 19, 1989 will be considered prior to issuance of a final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. 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 rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 100 shippers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order. In addition, there are approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and approximately 26 importers who import grapefruit into the United States. 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. A minority of these shippers and a majority of the producers and importers may be classified as small entities.

Grade and size requirements for the Florida citrus fruits covered under this marketing order are specified in § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 (7 CFR 905.306). This regulation was issued on a continuing basis subject to modification, suspension, or termination by the Secretary. Paragraph (a) of § 905.306 provides that no handler shall ship between the production area and any point outside thereof, in the continental United States, Canada, or Mexico, specified varieties of oranges, grapefruit, tangerines and tangelos unless such varieties meet the minimum grade and size requirements prescribed in Table I of this section.

This rule amends paragraph (a) of § 905.306 by temporarily relaxing the minimum size requirement for domestic

and import shipments of white seedless grapefruit from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter). The minimum size requirement for domestic and import shipments of seedless pink seedless grapefruit has been relaxed from size 48 to size 56 since December 5, 1988 [53 FR 49293]. Also, the minimum external grade requirement for domestic and import shipments of pink and white seedless grapefruit is temporarily relaxed from Improved No. 2 to U.S. No. 2 Russet. In addition, the minimum grade requirement for domestic shipments of Valencia and other late type oranges is temporarily relaxed from U.S. No. 1 to U.S. No. 1 Golden. The relaxations for grapefruit are for the period May 15, 1989, through August 20, 1989, and for Valencia oranges for the period July 1, 1989, through September 24, 1989, by which ending dates 1988–89 season shipments of these fruits will be finished.

The relaxation of the handling requirements for grapefruit and oranges is only for the remainder of the 1988–89 shipping season. As specified in § 905.306, tighter minimum grade and size requirements will resume for pink and white seedless grapefruit effective August 21, 1989, and for Valencia oranges September 25, 1989. The resumption of tighter handling requirements for 1989–90 season shipments is based upon the maturity, size, quality, and flavor characteristics of these fruits early in the shipping season.

The Citrus Administrative Committee (committee), which administers the program locally, met April 18, 1989, and unanimously recommended the relaxations be made effective for Florida grapefruit on May 15, 1989; and for Valencia and other late type oranges on July 1, 1989. The committee recommended the relaxed size requirements based on an analysis of the current and prospective marketing conditions as well as a projection of the size composition and maturity level of the crop remaining for shipment at that time. The committee reported that it expected that by May 15 size 56 grapefruit, and by July 1 Valencia and other late type oranges would be of a satisfactory quality, maturity, and flavor to be shipped to fresh markets. The grade relaxations pertain only to the external quality of the fruit, and they do not change internal requirements. Also, size 56 white seedless grapefruit receives consumer acceptance late in the season. The committee's recommendation to relax the grade and size requirements follows the practice of prior years of lowering such requirements when the fruit reaches an acceptable level of quality, maturity, and flavor, and is designed to maximize shipments to fresh market channels.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida orange and grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

Grapefruit import requirements are specified in § 944.106 (7 CFR Part 944), and are effective under section 8e of the Act. That section requires that grapefruit imported into the United States must meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Since this action relaxes the minimum grade and size requirements for domestically produced white and pink seedless grapefruit, the relaxed requirements automatically apply to imported white and pink seedless grapefruit. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed $^{4}/_{5}$-bushel cartons exempt from the import requirements.

Relaxation of the handling requirements for Florida and imported grapefruit and Florida Valencia oranges is intended to maximize domestic shipments to meet consumer needs. Therefore, the Department's view is that the impact of this action upon producers, handlers, and importers would be beneficial because it will enable shippers to provide grapefruit and oranges consistent with buyer requirements. The application of minimum grade and size requirements to Florida grapefruit and oranges and imported grapefruit over the past several years, has resulted in fruit of acceptable size, maturity, and flavor being shipped to fresh markets throughout the season.

Based on the above, 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, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes the handling requirements currently in effect for Florida grapefruit and oranges and imported grapefruit; (2) Florida grapefruit and orange handlers are aware of this action which was recommended by the committee at a public meeting and they will need no additional time to comply with the relaxed requirements; (3) the end of shipments of the 1988–89 season Florida grapefruit and Valencia orange crops is approaching; (4) the grade and size relaxations for imported grapefruit are mandatory under § 8e of the Act; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

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

2. The provisions of § 905.306 are amended by revising the following entries in Table I of paragraph (a) applicable to domestic shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, Amendment 49.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	
Oranges			
Valencia and other late type	7/1/89–9/24/89	U.S. No. 1 Golden	2 8/16
	On and after 9/25/89	U.S. No. 1	2 8/16
* * *	* * *	* * *	
Grapefruit			
Seedless, pink	5/15/89–8/20/89	U.S. No. 2 Russet (external), U.S. No. 1 (internal)	3 8/16
	On and after 8/21/89	Improved No. 2 (external), U.S. No. 1 (internal)	3 8/16
* * *	* * *	* * *	
Seedless, except pink	5/15/89–8/20/89	U.S. No. 2 Russet (external), U.S. No. 1 (internal)	3 8/16
	On and after 8/21/89	Improved No. 2 (external), U.S. No. 1 (internal)	3 8/16
* * *	* * *	* * *	

Dated: May 12, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–11946 Filed 5–17–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–40; Special Condition No. 25–ANM–28]

Special Conditions; Learjet 35A (C–21A), Lightning and Radio Frequency (RF) Energy Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Learjet Model 35A (C–21A) airplane. This airplane will have novel or unusual design features associated with engine electronic controllers. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection from the effects of lightning and the susceptibility to external radio frequency (RF) energy sources. These special conditions contain safety standards which the Administrator finds necessary to ensure that critical and essential functions of systems in the Learjet 35A (C–21A) are maintained.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168, telephone (206) 431–2157).

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1989, Learjet Corporation applied for an amendment to their Type Certificate No. A10CE to include the Learjet Model 35A (C–21A) airplane. The Learjet 35A (C–21A) airplane is being modified to incorporate a digital electronic engine control in place of the analog engine control.

Lightning Protection

The Learjet 35A (C–21A) airplane is being modified to incorporate engines with electronic controllers which perform critical and essential engine functions, such as the start schedule, engine overspeed protection, governing schedule, acceleration schedule, surge schedule, and minimum fuel schedule inputs to the engines. These controllers, which are designed to perform critical or essential functions, are susceptible to disruption to both the command/response signals and the operational mode logic as a result of electrical and magnetic interference. This disruption of signals could result in dual engine shutdown due to opening of the engine ultimate overspeed fuel cutoff solenoids. To ensure that a level of safety is achieved equivalent to that of existing operating airplanes, special conditions are needed which require that the controllers will be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning. To provide a means of compliance with the special conditions, a clarification on the threat definition for lightning is needed.

The following "threat definition," based on SAE Report AE4L–87–3, is a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon the system's installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis

need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level;

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation;

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential equation:

$$i(t) = I_o (e^{-at} - e^{-bt})$$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple Stroke (½ component D)	Multiple burst (component H)
I_o, amp	218,810	109,405	54,703	10,572
a, sec^{-1}	11,354	22,708	22,708	187,191
b, sec^{-1}	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:				
i_{peak}	200 KA	100 KA	50 KA	10 KA
and:				
$(di/dt)_{max}$(amp/sec)	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
(di/dt)(amp/sec)	1.0×10^{11} @t=.5 us	1.0×10^{11} @t=.25 us	0.5×10^{11} @t=.25	
Action integral (amp^2 sec)	2.0×10^{6}	0.25×10^{6}	$.0625\times10^{6}$	

Protection from Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the airplane to RF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when compliance with the RF special condition is shown with paragraphs 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 20 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10 KHz–3 MHz	100	100
3 MHz–30 MHz	1,000	1,000
30 MHz–100 MHz	100	100
100 MHz–200 MHz	200	3,000
200 MHz–1 GHz	2,000	6,000
1 GHz–2 GHz	2,000	14,000
2 GHz–8 GHz	600	14,000
8 GHz–10 GHz	2,000	14,000
10 GHz–40 GHz	1,000	8,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum separation distance between the airplane and emitters as follows: in the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case external threat levels to which an airplane would be exposed in the operating environment.

Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), Learjet must show that the Learjet Model 35A (C–21A) meets the applicable provisions of the regulations incorporated by reference in Type Certificate A10CE, or the applicable regulations in effect on the date of application for the Learjet Model 35A (C–21A). The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The type certification basis for the Learjet 35A (C–21A) airplane includes Part 25 of the FAR, effective February 1, 1965, as amended by 25–2 and 25–4. In addition: Amendment 25–7, 25–18 and Paragraph 25.571(d) of Amendment 25–10, Special Conditions set forth in FAA letter to Learjet dated March 1, 1967, and Special Conditions No. 25–50–CE–6 dated April 18, 1973, and Amendment 1 dated September 18, 1973, and Noise Type Certification Standards of Part 36, including Amendment 36–1; Special Conditions No. 25–72–CE–8 dated November 3, 1976, and Amendment 1 dated March 14, 1978; Special Federal Aviation Regulation 27 dated February 1, 1974, including Amendments 27–1 through 27–2 (Fuel Venting and Exhaust Emissions); and the special conditions adopted herein.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with Section 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances (54 FR 2995; January 23, 1989, and 54 FR 3426; January 24, 1989). For this reason and due to the fact that the anticipated type certification date for this airplane is imminent, the FAA has determined that good cause exists for adopting these special conditions without further notice. Therefore, special conditions are being issued without substantive change for this airplane and made effective immediately.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, aircraft, aviation safety, safety.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are isssued as part of the type certification basis for the Learjet Model 35A (C–21A) airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. *Lightning Protection.* Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not affected when the airplane is exposed to lightning.

Each essential function of new or modified electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

3. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* The Digital Engine Control System must be designed and installed to ensure that the operation and operational capabilities of this system to perform critical functions are not adversely affected when the airplane is exposed to high energy RF fields.

For the purpose of these special conditions, the following definitions apply:

Critical Functions. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Seattle, Washington, on May 3, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–11853 Filed 5–17–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 25

[Docket No. NM–39; Special Conditions No. 25–ANM–27]

Special Conditions: SAAB 340B, Lightning and Radio Frequency (RF) Energy Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the SAAB Model 340B airplane. This airplane will have novel or unusual design features associated with engine electronic controllers. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection from the effects of lightning and the susceptibility to external radio frequency (RF) energy sources. These special conditions contain safety standards which the Administrator finds necessary to ensure that critical and essential functions of systems in the SAAB 340B are maintained.

EFFECTIVE DATE: May 2, 1989.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C–68966, Seattle,

Washington 98168, telephone (206) 431–2157.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1987, SAAB-Scania (SAAB) applied for an amendment to their Type Certificate No. A52EU to include the SAAB Model 340B airplane. The SAAB 340B airplane, which is a derivative version of the SAAB SF340A airplane, is modified to incorporate the General Electric CT7–9B engines, improved performance, increased design weights and extended CG range.

Lightning Protection

The SAAB 340B airplane is being modified to incorporate engines with electronic controllers which perform critical and essential engine functions, such as the start schedule, engine overspeed protection, governing schedule, acceleration schedule, surge schedule, and minimum fuel schedule inputs to the engines. These controllers, which are designed to perform critical or essential functions, are susceptible to disruption to both the command/response signals and the operational mode logic as a result of electrical and magnetic interference. This disruption of signals could result in dual engine shutdown due to opening of the engine ultimate overspeed fuel cutoff solenoids. To ensure that a level of safety is achieved equivalent to that of existing operating airplanes, special conditions are needed which require that the controllers will be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning. To provide a means of compliance with the special conditions, a clarification on the threat definition for lightning is needed.

The following "threat definition," based on SAE Report AE4L–87–3, is a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon the system's installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level;

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation;

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential equation:

$$i(t) = I_o (e^{-at} - e^{-bt})$$

where;

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	218,810	109,405	54,703	10,572
a, sec^{-1}	11,354	22,708	22,708	187,191
b, sec^{-1}	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:				
i_{peak}	200 KA	100 KA	50 KA	10 KA
and:				
$(di/dt)_{max}$ (amp/sec)	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	1.0×10^{11} @t=.5 us	1.0×10^{11} @t=.25 us	0.5×10^{11} @t=.25 us	
Action intergral (amp^2 sec)	2.0×10^{6}	0.25×10^{6}	$.0625\times10^{6}$	

Protection from Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the airplane to RF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainly concerning the effectiveness of airframe shielding for RF energy. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when compliance with the RF special condition is shown with paragraphs 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 20 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10 KHz-3 MHz	100	100
3 MHz-30 MHz	1,000	1,000
30 MHz-100MHz	100	100
100 MHz-200 MHz	200	3,000
200 MHz-1 GHz	2,000	6,000
1 GHz-2GHz	2,000	14,000
2 GHz-8 GHz	600	14,000
8 GHz-10 GHz	2,000	14,000
10 GHz-40 GHz	1,000	8,000

To establish the values in paragraph 2 above, an analysis was peformed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum separation distance between the airplane and emitters as follows: In the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case external threat levels to which an airplane would be exposed in the operating environment.

Type Certification Basis

Under the provisons of § 21.101 of the Federal Aviation Regulation (FAR), SAAB must show that the SAAB Model 340B meets the applicable provisions of the regulations incorporated by reference in Type Certificate A52EU, or the applicable regulations in effect on the date of application for the SAAB Model SF340A. The regulation incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The type certification basis for the SAAB 3408 airplane includes Part 25 of the FAR, effective February 1, 1965, including Amendments 25–1, through 25–51 and as follows: §§ 25.812 and 25.832 as amended by Amendment 25–58; 25.841 and Appendix F as amended by Amendment 25–59; 25.853, 25.855, 25.857, and Appendix F as amended by Amendment 25–60; 25.853 and Appendix F as amended by Amendment 25–61; 25.904 and Appendix I as amended by Amendment 25–62; Federal Aviation Exemption No. 3469, from 14 CFR § 25.571(e)(2), issued on February 23, 1982; Part 36 of the FAR effective December 1, 1969, including Amendment 36–1 through current amendment; Special Federal Aviation Regulation 27 dated February 1, 1974, including Amendment 27–1 through 27–6 (Fuel Venting and Exhaust Emission); and the special conditions adopted herein.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances (54 FR 2995; January 23, 1989, and 54 FR 3426; January 24, 1989). For this reason and due to the fact that the anticipated type certification date for this airplane is imminent, the FAA has determined that good cause exists for adopting these special conditions without further notice. Therefore, special conditions are being issued without substantive change for this airplane and made effective immediately.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the SAAB Model 340B airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 *et seq.;*

E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 96-449, January 12, 1983).

2. *Lightning Protection.* Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not affected when the airplane is exposed to lightning.

Each essential function of new or modified electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

3. Protection from Unwanted Effects of Radio Frequency (RF) Energy. The Digital Engine Control System must be designed and installed to ensure that the operation and operational capabilities of this system to perform critical functions are not adversely affected when the airplane is exposed to high energy RF fields.

For the purpose of these special conditions, the following definitions apply:

Critical Functions. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Seattle, Washington, on May 2, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-11867 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-57-AD; Amdt. 39-6208]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 series airplanes which requires prohibiting Extended Range Operations with Two-Engine Airplanes (ETOPS) and restricting instrument approach conditions, if certain Inertial Reference Units (IRU) are installed. This amendment is prompted by reports of dual in-flight shutdowns of the IRU's. This condition, if not corrected, could result in the loss of primary attitude indication to the pilots during flight.

DATE: Effective May 22, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124; and Honeywell Inc., Mail Station MN51-1640, 8840 Evergreen Boulevard, Minneapolis, Minnesota 55433. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Schroer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1937. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A Model 737-300 operator has reported the loss of both Inertial Reference Units (IRU) during one flight. This dual loss during flight resulted in loss of primary attitude indication to the pilot, necessitating the use of the Standby Attitude Indicator. The dropout of both IRU's was caused by failure indications by the internal test (BITE) of the IRU's.

The FAA has also received a second report of an incident where another Model 737-300 series airplane experienced dual in-flight shutdown of the IRU's, apparently due to this same problem.

The FAA has been advised that certain IRU's, P/N S242T101-103, were manufactured with a component which prevents proper operation of the BITE function to signal a fault when a gyro approaches the end of its normal service life. This component is heat sensitive and, as the temperature of the IRU's increases, this component then allows activation of the delayed failure indication. Two IRU's with this condition could both fail on the same airplane when temperature conditions are raised above a certain threshold.

This condition, if not corrected, could result in in-flight loss of primary attitude indication to both pilots. Loss of both primary attitude displays during the final phase of a landing or during an ETOPS flight could result in unacceptable crew workload and a hazard under poor weather conditions.

Airplanes equipped with the Electronic Flight Instrument System (EFIS), have a different electronic equipment cooling system and are not subject to the same IRU failures.

Note.—Extended range operations with two-engine transport category airplanes is defined in FAA Advisory Circular 120-42A as an operation over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport, in deviation from § 121.161 of the Federal Aviation Regulations; and is referred to as "ETOP" operations.

The FAA has reviewed and approved Honeywell Service Bulletin HG1050AD-34-04, dated December 1, 1987, which describes modification of IRU P/N S242T101-103 to incorporate Mod 6, which includes the correct component to allow proper operation of the BITE function; and Honeywell Service Bulletin HG1050AD-34-03, Revision A, dated February 15, 1989, which describes an in-service modification to change IRU P/N S242T101-103 to P/N S242T101-105 "User Friendly" configurations. Modification in accordance with either of these bulletins will correct for the condition described in this AD.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires an Airplane Flight Manual (AFM) revision that restricts approach operations to certain weather conditions; and prohibits Extended Range operation for those Model 737-300 airplanes, not equipped with an EFIS, with IRU P/N S242T101-103 installed, until the P/N S242T101-103 units have Mod 6 incorporated or have been updated to the P/N S242T101-105 configuration, in accordance with the service bulletins previously mentioned.

The FAA intends to revise this AD to require either the incorporation of Mod 6 in all IRU P/N's S242T101-3, or replacement of all IRU P/N's S242T101-103 with P/N's S242T101-105. However, the proposed compliance time for these requirements is sufficiently long so that notice and public comment will not be impracticable.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major

under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 series airplanes not equipped with Electronic Flight Instrument System (EFIS), certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude the possibility of loss of the primary attitude display to both pilots during Instrument Meteorological Conditions (IMC) or during extended range flight, accomplish the following:

A. Within 10 days after the effective date of this AD, inspect the Inertial Reference Units (IRU) installed to determine the part number and modification status.

1. If both are part number S242T101-103 and neither have Mod 6 implemented, add the following restriction to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM:

a. "Instrument approach conditions are restricted to a 1000 foot Ceiling and 3 miles visibility."

b. "No Extended Range Operations (ETOPS)".

2. If one IRU is part number S242T101-103 without Mod 6 implemented, and the other IRU either has Mod 6 or is an approved part number other than S242T101-103, add the following restriction to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM:

a. "Instrument approach minimums are restricted to a 200 foot Decision Height (DH) and 1800 Runway Visual Range (RVR), (Category I)".

b. "No Extended Range Operations (ETOPS)".

3. Install a placard on the control cabin center instrument panel clearly defining the appropriate limitation applicable to each airplane, as required by paragraphs A.1. and A.2., above. A placard restricting ETOPS is not required if ETOPS has not been approved for the airplane. Placard wording and location shall be approved by an FAA Principal Operations Inspector (POI).

B. The limitations on each airplane, as required by paragraph A., above, shall remain in effect until both IRU's, P/N S242T101-103, have been modified in accordance with Honeywell Service Bulletin HG1050AD-34-04, dated December 1, 1987, or Honeywell Service Bulletin HG1050AD-34-03, Revision A, dated February 15, 1989, or have been replaced by IRU P/N S242T101-105.

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

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI) or Principal Operations Inspector (POI), as appropriate, who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

This amendment becomes effective May 22, 1989.

Issued in Seattle, Washington, on April 26, 1989.

Leroy A. Keith, Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-11862 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-CE-17-AD; Amt. 39-6215]

Airworthiness Directives; Cessna Models T303, 310, 320, 335, 340, 401, 402, 404, 411, 414 and 421 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 87-21-02, Amendment 39-5740, which required modification of the fuel filler port on Cessna 300 and 400 Series airplanes equipped with reciprocating engines. Confusion exists regarding the applicability of certain Models of the Cessna 310 series airplanes. This amendment is needed to clarify that applicability.

DATES: *Effective:* June 16, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Aircraft Company Service Information Letter ME84-31 dated July 20, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Riddle, ACE-140W, Aerospace Engineer, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone 316-946-4427.

SUPPLEMENTARY INFORMATION: This amendment revises AD 87-21-02, Amendment 39-5740 which required modification to the fuel filler ports on Cessna 300 and 400 Series airplanes equipped with reciprocating engines. Some confusion has apparently been prevalent concerning the applicability of this AD to the Model T310 and to the early Model 310 airplanes. Although these models are covered by the serial number listing the FAA has determined that the list of affected airplanes and corresponding serial numbers needs clarification. Therefore, the FAA is revising AD 87-21-02 by adding a T310 models reference and by providing a more detailed breakdown of the applicable serial numbers for the Model 310 airplanes.

Since this amendment provides clarification only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

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

The FAA has determined that few if any small entities will experience a significant financial impact as a result of this proposal. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rule Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By revising and reissuing AD 87–21–02, Amendment 39–5740, as follows:

Cessna: Applies to the following airplanes equipped with reciprocating engines certificated in any category:

Model	*Serial Number*
T303	T30300001 thru T30300301
310D	39032 thru 39299
310E	310M0001 thru 310M0036
310F	310–0001 thru 310–0156
310G thru 310R	310G0001 thru 310R2140
(Including T310P, T310Q and T310R)	
320 thru 320F	320–0001 thru 320F0045
335	335–0001 thru 335–0065
340 thru 340A	340–0001 thru 340A1543
401 thru 401B	401–0001 thru 401B0221
402 thru 402C	402–0001 thru 402C0653
404	404–0001 thru 404–0859
411 thru 411A	411–0001 thru 411A0300
414 thru 414A	414–0001 thru 414A0858
421 thru 421C	421–0001 thru 421C1257

Compliance: Required as indicated in the body of the AD, unless already accomplished per the unrevised version of this AD.

To preclude misfueling of the airplane resulting in engine failure, accomplish the following:

(a) Within the next 12 calendar months after the effective date of this AD, unless already accomplished, modify all fuel filler opening(s) in accordance with the instructions contained in Cessna Service Information Letter ME84–31 dated July 20, 1984.

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

(c) In accordance with FAR Part 43, Appendix A, Item (c) 29, the modifications required by this AD (except installation of the SK303–29 kit) is preventative maintenance and may be performed by the holder of a pilot certificate issued under FAR Part 61 on airplanes owned or operated by him subject to the limitations of FAR 43.3(a). The maintenance record entries required by FAR 43.9 and FAR 91.173 must be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This Amendment revises AD 87–21–02, Amendment 39–5740.

This amendment becomes effective on June 16, 1989.

Issued in Kansas City, Missouri, on May 3, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–11852 Filed 5–17–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–64–AD; Amdt. 39–6216]

Airworthiness Directives; McDonnell Douglas Model DC–9–15F, –32F, –33F, and –34F Series Airplanes, Including C–9A and C–9B (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) applicable to certain DC–9 series airplanes which currently requires inspection and modification of the main cargo door hydraulic control valve and control panel access door. This amendment also replaces the requirements of another existing AD and requires (1) inspection and modification of the main cargo door hydraulic control valve and control panel access door, (2) visual inspection of the main cargo door to ensure the door is locked prior to each takeoff, (3) inspection and modification of the exterior markings on the main cargo door, and (4) functional checks of the door-open indicating system. This AD is prompted by a recent accident in which the main cargo door opened in flight. This condition, if not corrected could result in loss of pressurization and control of the airplane.

DATES: Effective May 30, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988–5338.

SUPPLEMENTARY INFORMATION: In 1975, FAA issued AD 75–03–03, Amendment 39–2076, to require inspection, modification, and replacement, if necessary, of the main cargo door hydraulic control valve and control panel access door spacer on McDonnell Douglas Model DC–9 series airplanes. That action was prompted by the inadvertent opening of the main cargo

door on a Model DC–9 series airplane during flight. This condition, if not corrected, could lead to loss of pressurization and control of airplane.

In 1984, FAA issued AD 84–23–02, Amendment 39–4953, applicable to both Model DC–8 and DC–9 series airplanes, to require visual inspection of the main cargo door to ensure it is closed, latched, and locked prior to each takeoff, or modification of the original, and installation of a second door-open indicating system.

Since the issuance of those two AD's, an accident involving a model DC–9 series airplane recently occurred in which the main cargo door inadvertently opened during takeoff or shortly thereafter. This has prompted the FAA to further review the Model DC–9 main cargo door, including the main cargo door design, prior incidents of inadvertent openings of main cargo doors in flight, maintenance of the door, all available service information, and the existing airworthiness directives concerning the Model DC–9 main cargo door.

The FAA has determined that some Model DC–9 airplanes may not have proper exterior markings on the main cargo door, which are necessary to determine visually that the door is properly closed, latched, and locked. In addition, on some airplanes the exterior markings are not easily seen because of the blending background color, especially under night lighting conditions. Also, the FAA has been advised that some crew members simply lean outside the main entrance door to visually check that the latch controls on the cargo door are in the locked position. A door-locked indication can not be properly ascertained from the main entrance door.

The airplane involved in the accident described above did not have the dual door-open indicating system installed; its operator opted to rely on the visual inspection method of AD compliance. Aircraft which do not have the dual door-open indicating system (described in McDonnell Douglas Service Bulletin 52–92) installed could have a latent failure condition in the original door-open indicating system such that the door-open annunciating light can extinguish with the cargo door merely resting on the door jamb in the closed, but not latched and locked, position. Also, properly securing the main cargo door hydraulic control panel access door can prevent inadvertent movement of the hydraulic control valve operating handle which is used to activate (open) the main cargo door. Based on the FAA review of the main cargo door design, operation, and maintenance, the FAA has determined that additional inspections, modifications, and checks are necessary to ensure that the Model DC–9 main cargo door is properly closed, latched, and locked prior to flight.

The FAA has reviewed and approved McDonnell Douglas All Operators' Letters (AOL) 9–799, dated April 16, 1974, 9–799A, dated January 22, 1975, and Service Bulletin 52–92, Revision 2, dated November 21, 1985, which describe inspections, modifications, and checks of the main cargo door hydraulic control valve and control panel access door, the original door-open indicating system, and the dual door-open indicating system. The FAA has also approved the exterior markings on the main cargo door which are used when visually determining that the door is closed, latched, and locked.

McDonnell Douglas has also developed additional safety features to prevent the door from opening in flight. The FAA has reviewed and approved McDonnell Douglas Service Bulletin 52–91, Revision 2, dated August 12, 1976, which describes installation of a hydraulic isolation valve to shut off the hydraulic pressure to the control valve when the system is not in use; Service Bulletin 52–93, Revision 1, dated May 3, 1978, which describes installation of a viewing window in the exterior skin of the door for visual inspection of the lockpin position; and Service Bulletin 52–100, dated September 30, 1976, which describes installation of a vent door to improve the positive lock feature of the cargo door latching and locking system and limit pressurization of the airplane.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 75–03–03; is different from and replaces the requirements of AD 84–23–02 for Model DC–9 series airplanes only; and requires additional inspections, modifications, and checks of the main cargo door. All requirements currently imposed by AD 75–03–03 are incorporated into this AD.

The requirements of this AD differ from and replace the requirements of AD 84–23–02 for Model DC–9 airplanes only by requiring the operator to document compliance with the visual check requirement to ensure that the door is closed, latched, and locked prior to takeoff; deleting the requirement that a flight crew member, a mechanic, or a ramp supervisor ensure that the main cargo door is closed, latched, and locked prior to takeoff, placing that responsibility on the operator; and requiring that the visual check of the exterior manual latch controls be accomplished from outside the airplane. In addition, the operator must provide qualified personnel and training on the door closing, latching, and locking procedures as well as documentation of compliance with this AD.

This AD also requires additional inspection, modification and checks by requiring initial and repetitive checks of the original door-open indicating system; initial and repetitive inspections of the main cargo door control panel access door and "T" handle clip; and inspection and modification, if necessary, of the main cargo door exterior lockpin handle and latch actuating socket markings.

Accomplishment of the modifications specified in McDonnell Douglas Service Bulletins 52–91, 52–92, 52–93, and 52–100 will terminate certain inspections and checks required by this AD. The FAA considers the requirements of this AD as interim measures. The FAA is currently evaluating all available modifications to the main cargo door system, as well as other actions, and may propose additional mandatory corrective actions to ensure that the Model DC–9 main cargo door will not inadvertently open in flight.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of The Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 75–03–03, Amendment 39–2076, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC–9–15F, –32F, –33F, –34F, including C–9A and C–9B (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent opening of the main cargo door in flight, a condition which could result in loss of pressurization and control of the aircraft, accomplish the following:

A. Within the next 14 days after the effective date of this AD, ensure that the main cargo door is closed, latched, and locked prior to takeoff following each operation of the door, in accordance with the procedures specified below. The procedures required by this paragraph must be accomplished by qualified and trained personnel, and the training program must be approved by the FAA Principal Maintenance Inspector (PMI). The method for documentation of compliance must also be approved by the FAA PMI.

1. From the outside of the airplane, perform a visual check of the exterior manual latch controls, to ensure that the latch actuating socket and the lockpin handle are in the LOCK position; or

2. Perform a visual check of the latches and lockpins, located on the inside of the main cargo door, to ensure that the latches are in the closed position and the lockpins are in the locked position.

3. Prior to taxi, communicate to the flight crew that the main cargo door has been closed, latched, locked, and checked.

B. Unless the modifications described in paragraph F. of this AD have previously been accomplished, within the next 30 days after the effective date of this AD, and thereafter at intervals not to exceed 45 days, conduct a main cargo door-open indicating system functional check in accordance with Paragraph 1 of McDonnell Douglas All Operator's Letter (AOL) 9–799, dated April 16, 1974. If the main cargo door-open indicating system functional check is not successfully accomplished, repair the main cargo door-open indicating system prior to further flight, in accordance with AOL 9–799.

C. Within the next 30 days after the effective date of this AD, and thereafter at intervals not to exceed 45 days, inspect and modify the main cargo door control panel access door, spacer block, and "T" handle stowage clip, in accordance with McDonnell Douglas AOL 9–799A, dated January 22, 1975, and Paragraph 2.A. of AOL 9–799, dated April 16, 1974. In addition, inspect the control panel access door to ensure the door can be secured in the down and locked position. If the control pane access door can not be secured in the down and locked position, repair prior to further flight.

D. Unless previously accomplished in accordance with paragraph (2) of AD 75–03–03, Amendment 39–2076, within the next 30 days after the effective date of this AD, verify that the main cargo door hydraulic control valve shaft operates freely, without binding, between the operate neutral and neutral lock positions. This shall be accomplished by opening the main cargo door hydraulic control valve control panel access door; raising the "T" handle Douglas P/N 4777888–1, and pulling the "T" handle vertically upward to its maximum travel (operate neutral position). When the vertical force on the "T" handle is relieved, the main cargo door hydraulic control valve shaft should return to the neutral lock (down) position without binding. Replace the main cargo door hydraulic control valve, Douglas P/N 5919985–5001, prior to further flight, if the valve shaft does not return freely to the neutral lock position.

E. Within the next 30 days after the effective date of this AD, inspect the main cargo door exterior lockpin handle and latch actuating socket markings in accordance with McDonnell Douglas AOL 9–799, dated April 16, 1974, paragraph 4.C.; and McDonnell Douglas Drawings 7910689, Revision P, dated November 29, 1973, item numbers 16 and 18 (DC–9–15F), or 7910868, Revision AK, dated January 21, 1977, item numbers 16 and 18 (DC–9–32F, –33F, and –34F). If the exterior markings are not correct, modify in accordance with the above noted McDonnell Douglas drawings prior to further flight.

F. Compliance with the requirements of paragraph B., may be terminated upon the installation of a main cargo door-open indicating circuit that utilizes a proximity switch, revision of the existing main cargo door-open indicating circuit, and the installation of a main cargo door indicating system test circuit, as outlined in the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 52–92, Revision 2, dated November 21, 1985.

G. Compliance with the requirements of paragraphs A., B., and F. may be terminated upon installation of the modifications to the main cargo door systems, in accordance with McDonnell Douglas Service Bulletins 52–91, Revision 2, dated August 12, 1976; 52–92, Revision 2, dated November 21, 1985; 52–93, Revision 1, dated May 3, 1978; and 52–100, dated September 30, 1976.

H. The checks and modifications specified in paragraphs A. through G. of this AD are not required on airplanes which have the main cargo door deactivated and secured in the closed and locked position in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, until that door is reactivated.

I. Compliance with the requirements of this AD constitutes terminating action for the requirements of AD 84–23–02, Amendment 39–4953, for Model DC–9 series airplanes only.

Note: The requirements of AD 84–23–02 relating to Model DC–8 series airplanes are not affected by this AD.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

This amendment becomes effective May 30, 1989.

Issued in Seattle, Washington, on May 4, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–11865 Filed 5–17–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–ANE–09; Amdt. 39–6214]

Airworthiness Directives; Textron Lycoming Model TIO–540–S1AD Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires initial and repetitive inspections of exhaust system flanges, on Textron Lycoming Model TIO–540–S1AD reciprocating engines until a modified crossover exhaust tube assembly is incorporated. The AD is needed to prevent possible cracking of

exhaust system flanges which could result in separation of exhaust pipes releasing hot exhaust gases into the engine compartment.

EFFECTIVE DATES: June 9, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Textron Lycoming/Subsidiary of Textron Inc., Williamsport, Pennsylvania 17701, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Pat Perrotta, Manager, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: The FAA has determined that a number of accident, incident, and service difficulty reports were filed involving problems with the engine exhaust systems on aircraft equipped with Textron Lycoming Model TIO-540-S1AD engines. In addition, the National Transportation Safety Board issued safety recommendations A-88-147 through A-88-152 pertaining to this subject. The reports relate chiefly to loose or separated left intermediate exhaust pipes, cracked flanges, loose or broken V-band couplings, and misaligned gaskets. These failures are believed to have been caused by improper alignment during installation of the exhaust pipes and/or improper V-band coupling installation. The engine manufacturer has modified the single-piece crossover pipe to a new-design two-piece crossover pipe assembly. Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires initial and repetitive inspections of the exhaust pipes and V-band coupling for cracking or distortion, and replacement of a single-piece exhaust crossover tube with a newdesign, two-piece assembly on Textron Lycoming Model TIO-540-S1AD reciprocating engines.

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

The FAA has determined that this regulation involves 900 engines. The appropriate total cost per engine would be $858. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Textron Lycoming: Applies to Textron Lycoming Model TIO-540-S1AD engines.

Compliance is required as indicated, unless already accomplished.

To prevent cracking or distortion of engine exhaust system flanges, V-band coupling, and pipes, which could result in separation of exhaust pipes releasing hot exhaust gases into the engine compartment, accomplish the following:

(a) Within the next 25 hours time in service, after the effective date of this AD, unless already accomplished within the previous 75 hours time in service, accomplish the following:

(1) Remove the V-band coupling, P/N LW-12093-5, and loosen the exhaust system components and support members to allow for movement of the crossover exhaust assembly and the transition/turbocharger assembly. Visually inspect the connecting flanges of the intermediate exhaust pipe, P/N LW-15811, and the number six cylinder exhaust riser, P/N LW-15809, for cracks using a 10-power, or greater, magnifying glass.

(2) Inspect the mating surface of the flanges for distortion by checking that there is uniform contact of the surfaces over the entire perimeter, either against a flat surface or between the two parts.

(3) Visually inspect the V-band coupling for cracks, using a 10-power, or greater, magnifying glass, and measure the depth from the inside of the base of the V-band segments to the inside diameter (straight-edge laid across the legs). The inside depth (to the straight-edge) must not be less than .230-inch.

(4) Inspect the intermediate and cross over pipes for damage such as bulges, cracks, and gouges, which might prevent them from moving freely at their slip joints.

(5) Inspect the crossover pipe brackets, P/N LW-14908 and P/N LW-14909, and crossover exhaust pipe clamp, P/N LW-14955, for distortion and cracks.

(6) If any part is found with cracks, gouges, bulges or distortion, as specified in the inspections of preceding paragraphs (a)(1) through (a)(5), it must be replaced with a serviceable part prior to further flight.

(b) Thereafter, at intervals not to exceed 100 hours time in service since the last inspection, remove and inspect in accordance with paragraphs (a)(1) through (a)(5) of this AD. If any inspected part is found with cracks, gouges, bulges or distortion, it must be replaced with a serviceable part prior to further flight.

(c) Reassemble and reinstall the exhaust system when the inspections of paragraphs (a) or (b) of this AD are completed, in accordance with the following procedures:

(1) Coat the mating surface of all slip joints with an anti-seize compound, such as Fel-Pro C5A, to minimize binding.

(2) Install a new gasket, P/N 78084, between the number 6 cylinder exhaust riser and the intermediate pipe. Ensure that the connecting flanges of the intermediate pipe and the number 6 cylinder exhaust riser face each other squarely with the gasket concentrically seated.

(3) Assemble the V-band coupling over the joint and tighten the lock-nut to 70% of the full torque value. Tap the coupling with a rubber mallet to equalize tension. Then tighten to the full torque value. Again tap coupling with a rubber mallet to equalize band tension.

Note: The split-type lock-nut has a full torque value of 85 inch-pounds; the drilled hex-nut, 75 inch-pounds.

(4) After the V-band coupling has been fully torqued, tighten all those parts of the exhaust system that were loosened initially. Tighten them equally, particularly the cylinder exhaust pipes and the transition/turbocharger interface, using incremental torque applications. Do not tighten any part fully before proceeding to another part on the same side of the engine.

(d) Modify the engine exhaust system within 325 hours time in service, after the effective date of this AD, as follows:

(1) Replace the single-piece crossover pipe, P/N LW-15810, with a new-design, two-piece crossover pipe assembly, P/N's LW-16103 and LW-16102. Also, replace the left intermediate exhaust pipe, P/N LW-15811, with a new, zero time in service part.

Note: Replacement of the left intermediate exhaust pipe, P/N LW-15811, is necessary even if it appears serviceable, since it may have been previously over-stressed from misalignment.

(2) Follow the replacement procedures of paragraph (c), except that there are now three slip joints to be coated with Fel-Pro C5A, before installation. Ensure that all three slip joints have a minimum 1.50-inch engagement. After assembly, rotate the intermediate and crossover pipe as needed to align them. Finally, install the heat shield and crossover brackets.

Note: Textron Lycoming Service Bulletin No. 484, dated January 30, 1989, pertains to this subject.

(e) Compliance with paragraph (d) of this AD is considered terminating action for the initial and repetitive inspection requirements.

(f) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(g) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternative method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

This amendment becomes effective on June 9, 1989.

Issued in Burlington, Massachusetts, on April 28, 1989.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-11866 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-ANE-33; Amendment 39-6160]

Airworthiness Directives; Rolls-Royce (R-R) plc RB211-22B, -524, -524B, -524B2, -524B3, and -524C2 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) to identify additional low pressure turbine (LPT) stage 2 vane nozzle assemblies, installed in certain R-R RB211 engines, for modification in accordance with the manufacturer's published instructions. This amendment is needed to prevent LPT stage 1 disk failure that can result in uncontained engine failure.

DATES: *Effective*—May 31, 1989.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 31, 1989.

Compliance: As indicated in the body of this AD.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Rolls-Royce plc, Technical Publication Department, P.O. Box 31, Derby DE2 8BJ, England, or may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: This amendment, as proposed by a notice of proposed rulemaking (NPRM) published in the **Federal Register** on October 20, 1988, (53 FR 41194), amends Amendment 39-5753 (52 FR 41973; November 2, 1987), AD 87-23-04. This amendment identifies additional stage 2 vane nozzle assemblies requiring modification in accordance with the requirements of R-R Service Bulletin (SB) RB.211-72 8301, Revision 5, dated May 13, 1988. On October 7, 1987, AD 87-23-04 was issued to require modification of certain LPT stage 2 vane nozzle assemblies. However, the engine manufacturer identified additional assemblies requiring modification subsequent to issuing the NPRM that preceded Amendment 39-5753. Since adding these newly identified assemblies to the requirements of AD 87-23-04 would have made the AD requirements more restrictive relative to the requirements proposed in the NPRM, the issuance of a future amendment to the AD was stated as forthcoming.

R-R SB RB.211-72-8301, Revision 5, dated May 13, 1988, adds descriptive information to identify the various standards of existing stage 2 vane nozzle assemblies in need of modification. This descriptive information now identifies LPT stage 2 vane nozzle assemblies Part Number (P/N) LK59046, LK59816, LK59853, LK59818, LK59038, LK55447, LK55420, LK54278, LK55452, and LK59002, in addition to P/N's LK63392, LK63331, and LK63333 identified in AD 87-23-04. AD 87-23-04 issuance was prompted by an uncontained LPT stage 1 disk failure in service which was precipitated by an LPT stage 2 vane nozzle assembly.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. One comment was received.

The commenter had solicited comments from operators, received comments from two operators, and related them to the FAA.

The one operator who was affected by the proposed increase in effectivity has indicated that they anticipated the proposed change and expect to modify all assemblies prior to the proposed compliance deadline.

The FAA agrees with the comments made by this operator and since the operator agrees with the original FAA proposal, no additional FAA response is necessary.

The other operator questioned the need for the proposed rule on the basis that it includes engine models in which different standard turbine blades are installed that did not experience LPT disk failure.

The FAA disagrees. The engine models listed in the effectivity section of the AD, regardless of their turbine blade build standard, are susceptible to this failure. Therefore, the FAA believes that all engine models listed in the AD should be modified.

This operator also pointed out a typographical error in the supplementary information referencing Service Bulletin 8103 when it should read 8301. The FAA agrees and the error has been corrected. Consequently, the AD is adopted as proposed with the corrections mentioned above.

Since this condition is likely to exist or develop on other engines of the same type design, this amendment to the AD requires modification of LPT stage 2 vane nozzle assemblies in accordance with R-R SB RB.211-72-8301, Revision 5, dated May 13, 1988.

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

The FAA has determined that this proposed regulation involves approximately 150 RB211-22B and RB211-524, -524B2, -524B3, -524C2 engines (domestic fleet) at an approximate total cost of $675,000. It has also been determined that few, if any,

small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using L-1011 and Boeing 747 series aircraft in which the RB211 engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by amending AD 87-23-04, Amendment 39-5753 (52 FR 41973; November 2, 1987). The amended AD is restated in its entirety for clarity as follows:

Rolls-Royce plc: Applies to Rolls-Royce plc (R-R) RB211-22B, -524, -524B, -524B2, -524B3, and -524C2 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent low pressure turbine (LPT) stage 1 disk uncontained failure, accomplish the following:

(a) Modify LPT stage 2 vane nozzle assemblies, Part Numbers (P/N) LK63392, LK63331, LK63333, LK59046, LK59816, LK59853, LK59818, LK59038, LK55447, LK55420, LK54278, LK55452, and LK59002, in accordance with the Accomplishment Instructions of R-R Service Bulletin (SB) RB.211-72-8301, Revision 5, dated May 13, 1988, at the next shop visit of the LPT module, but not later than June 30, 1989.

Note: For the purpose of this AD, an LPT module shop visit is defined as separation of the LPT rotor assembly from the LPT case/vane nozzle assembly as necessitated by (1) its condition or (2) a requirement for scheduled maintenance.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and FAR 21.199 to a base where the AD may be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternative method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service.

The LPT stage 2 vane nozzle assembly modification shall be done in accordance with Rolls-Royce SB RB.211-72-8301, Revision 5, dated May 13, 1988. 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 Rolls-Royce plc, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

This amendment becomes effective on May 31, 1989.

Issued in Burlington, Massachusetts, on March 22, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-11861 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-19]

Amendment to Control Zone, Titusville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment to the Titusville, Florida, Control Zone is editorial in nature. The existing description of the zone excludes restricted area R-2926. In May 1988, the various Cape Kennedy restricted areas were consolidated and renamed. The restricted area adjacent to the Titusville Control Zone is Cape Canaveral R-2934. The control zone description is being changed to reflect the correct restricted area.

DATES: *Effective Date:* 0901 u.t.c., July 27, 1989. Comments must be received on or before June 28, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-19, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on The Rule

Although this action is in the form of a final rule, which involves amending the description of the Titusville, Florida, Control Zone, this change is so minor and nonsubstantive that prior public notice is considered unnecessary. Since no increase in controlled airspace will result from this change, which was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to correct the description of the Titusville, Florida, Control Zone. The existing description makes reference to Cape Kennedy restricted area R-2926. The correct reference is Cape Canaveral restricted area R-2934. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6E dated January 3, 1989.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to make this minor and nonsubstantive change. No increase in controlled airspace will result from this rule. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary and contrary to the public interest.

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, Control zone.

Adoption of the Amendment

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

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

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

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

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Titusville, Florida [Amended]

By substituting the phrase, "excluding the portion within R-2934" in lieu of the existing phrase, "excluding the portion within R-2926."

Issued in East Point, Georgia, on April 27, 1989.

William D. Wood,

Acting Manager Air Traffic Division, Southern Region.

[FR Doc. 89-11919 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-11]

Amendment of Transition Area, Tifton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Tifton, Georgia, transition area deletes that portion of the 700-foot transition area within a five-mile radius of the Eaglehead Airport. This airport, located approximately seven miles southwest of the Henry Tift Myers Airport, has been closed. Also, a minor correction is made to the geographic position coordinates of the Henry Tift Myers Airport.

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

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On March 17, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Tifton, Georgia, transition area (54 FR 11230). The Eaglehead Airport, located approximately seven miles southwest of the Henry Tift Myers Airport, has been closed. Thus, a need no longer exists to include this airport in the transition area. Additionally, the geographic position coordinates for the Henry Tift Myers Airport were to be corrected. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the Tifton, Georgia, transition area by eliminating the five-mile radius around Eaglehead Airport and correcting the geographic position coordinates for the Henry Tift Myers Airport.

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 area.

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; 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:

Tifton, Georgia [Amended]

By amending the coordinates of the Henry Tift Myers Airport to read, "(Lat. 31°26'00" N., Long. 83°29'00" W.)," and deleting the clause, "within a five-mile radius of Eaglehead Airport "(Lat. 31°23'00" N., Long. 83°36'00" W.)".

Issued in East Point, Georgia on May 4, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-11860 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 89-ACE-10]

Alteration of Transition Area—Monroe City, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the description of the Monroe City, Missouri, transition area by deleting therefrom the 1,200-foot transition area designation. Since the

Illinois and Missouri transition areas already provide for that airspace, it is redundant to repeat it in the Monroe City, 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 Part 71) is to alter the transition area at Monroe City, Missouri. This transition area presently includes a 1,200-foot airspace description. Since the Illinois and Missouri transition areas already provide for that airspace, it is unnecessary to have it reiterated in the Monroe City, Missouri, transition area designation. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989. Accordingly, action is taken herein to make this deletion.

Since this action eliminates a redundancy, does not require charting changes, and does not change the size of the transition area, it is an amendment in which the public would not be particularly interested. Therefore, 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:

Monroe City Regional Airport, Monroe City, Missouri [Amended].

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:

Monroe City, Missouri [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Monroe City Regional Airport (lat. 39°38'05"N., long. 91°43'40"W.) and within 4 miles each side of the 239° radial of the Quincy, Illinois VORTAC, extending from the 5-mile radius area to 8 miles northeast of the airport; within 2.5 miles each side of the 090° bearing from the Monroe City, Missouri, Airport extending from the 5-mile radius area to 7.5 miles of the airport.

This amendment becomes effective at 0901 UTC September 21, 1989.

Issued in Kansas City, Missouri, on April 28, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-11857 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASO-13]

Alteration of VOR Federal Airways, North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V-20, V-266, and V-409 located in the vicinity of Greensboro, NC. The realignment improves the flow of traffic in the Charlotte, NC, and Greensboro areas by providing bypass routes in those areas. This action enhances safety and reduces controller workload.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On November 30, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-20, V-266, and V-409 located in the vicinity of Greensboro, NC (53 FR 48275). The airway realignment enhances safety by providing bypass routes in the Charlotte, NC, and Greensboro areas, thereby avoiding the mix of en route and terminal traffic. This action improves traffic flow and reduces delays and controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V-20, V-266, and V-409 located in the vicinity of Greensboro, NC. The airway realignment enhances safety by providing bypass routes in the Charlotte, NC, and Greensboro areas, thereby avoiding the mix of en route and terminal traffic. This action improves traffic flow and reduces delays and controller workload.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal

Aviation Regulations (14 CFR Part 71) is amended, as follows:

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–20 [Amended]

By removing the words "Electric City, SC; Spartanburg, SC; Greensboro, NC" and by substituting the words "Electric City, SC; Sugarloaf Mountain, NC; Barretts Mountain, NC;"

V–266 [Revised]

From Electric City, SC, to Spartanburg, SC. From Greenboro, NC; South Boston, VA; Lawrenceville, VA; Franklin, VA; Elizabeth City, NC; to Wright Brothers, NC.

V–409 [Revised]

From Charlotte, NC, INT Charlotte 088° and Liberty, NC, 228° radials; Liberty; to Raleigh-Durham, NC.

Issued in Washington, DC, on May 9, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89–11918 Filed 5–17–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ANM–23]

Amendment of Transition Area, Lakeview, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Lakeview, Oregon, Transition Area. An additional 1,200 feet of transition area airspace is needed to encompass turbojet aircraft operations associated with holding at Goose NDB, Lakeview, Oregon.

EFFECTIVE DATE: 0901 U.T.C., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 88–ANM–23, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2536.

SUPPLEMENTARY INFORMATION:

History

On January 25, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace to accommodate aircraft climbing in the Goose NDB holding pattern (54 FR 3614).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the amendment is adopted as proposed. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations provides additional controlled airspace to accommodate climbing in the Goose NDB (Lakeview, Oregon) holding pattern by turbojet aircraft. This area will be depicted on aeronautical charts enabling pilots operating in visual flight conditions to circumnavigate the area and avoid conflicting with aircraft operating on Instrument Flight Rules clearances.

The FAA has determined that this regulations 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, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; 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:

Lakeview, Oregon [Amended]

On the eighth line after "RBN", Change the period to a semi-colon and add the following:

"and that airspace within an area bounded by a line beginning at latitude 42°22'00", longitude 120°41'00", to latitude 42°22'00", longitude 120°12'00", to latitude 41°48'00", longitude 120°12'00", to latitude 41°48'00" longitude 120°41'00", to beginning."

Issued in Seattle, Washington, on April 28, 1989.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 89–11859 Filed 5–17–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASO–4]

Designation of Transition Area, Huntingdon, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment designates the Huntingdon, TN, transition area for protection of Instrument Flight Rule (IFR) operations at the Carroll County Airport. A Standard Instrument Approach Procedure (SIAP) has been developed to serve the airport. This action lowers the base of controlled airspace from 1,200 feet to 700 feet above the surface in the vicinity of the airport. Concurrent with publication of the SIAP, the operating status of the airport will change from Visual Flight Rules (VFR) to IFR.

EFFECTIVE DATE: 0901 u.t.c., October 19, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On March 1, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Huntingdon, TN, transition area (54 FR 8553). This notice proposed to lower the base of controlled airspace from 1,200 feet to 700 feet above the surface in the vicinity of the Carroll County Airport. A SIAP has been developed for the airport. The additional controlled airspace is required for protection of IFR aeronautical operations. If approved, concurrent with publication of the SIAP, the operating status of the airport will be changed from VFR to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Huntingdon, TN, transition area. The base of controlled airspace will be lowered from 1,200 feet to 700 feet above the surface in the vicinity of Carroll County Airport. The additional controlled airspace is required for protection of IFR aeronautical operations.

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 area.

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

Adoption of The Amendment

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Huntingdon, TN [New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Carroll County Airport (Lat. 36°05'23" N, Long. 88°27'45"W); within 3.5 miles each side of the 186° bearing from the Huntingdon NDB (Lat. 36°05'17" N, Long. 88°28'10" W), extending from the 7-mile radius area to 10 miles south of the NDB.

Issued in East Point, Georgia, on May 3, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-11858 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Interim Rule with Request for Comments.

SUMMARY: This interim rule amends the premerger notification rules that require the parties to certain mergers or acquisitions to file reports with the Federal Trade Commission ("the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice ("the Assistant Attorney General"), and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. This interim rule codifies the practices of the Federal Trade Commission that make public administrative grants of early termination of the waiting period through means other than publication in the Federal Register.

DATE: The interim rule is effective on June 19, 1989. The Commission will, however, accept comments on the revised rule that are received on or before June 19, 1989, and may reevaluate the rule in light of those comments.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 159, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Thomas F. Hancock, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326-3100.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

This amendment to the Hart-Scott-Rodino premerger notification rules is purely technical relating to the procedures the Commission and the Assistant Attorney General will use to make public information about their decisions not to take enforcement action during the waiting period provided in section 7A(b) of the Clayton Act. This amendment does not affect the substantive obligations of persons subject to the act's notification requirement.

This amendment is not subject to notice and comment under the Administrative Procedure Act, 5 U.S.C. 553(b)(A). The requirements of the Regulatory Flexibility Act also do not apply. 5 U.S.C. 601(2).

Paperwork Reduction Act

The Hart-Scott-Rodino Premerger Notification rules and report form contain information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501-3518. These requirements were reviewed and approved by the Office of Management and Budget (OMB Control No. 3084-0005). Because this amendment would not affect the information collection requirement of the premerger notification program, the amendment has not been submitted to OMB for review under setion 3504(h) of the Paperwork Reduction Act.

Background

Section 7A of the Clayton Act ("the act"), 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating

certain acquisitions of assets or voting securities to give advance notice to the Commission and the Assistant Attorney General and to wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of section 7A.

Subsection 7A(d)(1) of the act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C., 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsection 7A(d)(2) of the act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority (A) to define the terms used in the act, (B) to exempt additional persons or transactions from the act's notification and waiting period requirements, and (C) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A.

On July 31, 1978, the Commission, with the concurrence of the Assistant Attorney General, promulgated final premerger notification rules pursuant to subsections 7A(d)(1) and (2). See 43 FR 33451. The rules have been modified several times since they were first promulgated. The rules are divided into three parts, which appear at 16 CFR Parts 801, 802, and 803. Part 801 defines a number of the terms used in the act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to Part 803 of the rules.

Statement of basis and Purpose for the Commission's Revision of Its Premerger Notification Rules

The Commission has long had a practice of making public the enforcement agencies' decisions to grant early termination of the Hart-Scott-Rodino waiting period both formally in the **Federal Register** and informally over the phone and through the Commission's Public Reference Section. Recently, it came to the Commission's attention that persons could profit because of their knowledge and use of these practices to obtain information about early terminations to the detriment of other investors who were not aware that the information was available. This revision of § 803.11(c) of the premerger notification rules, 16 CFR 803.11(c), codifies the Commission's informal procedure and provides notice to the public that the procedure exists.

Section 7A(a) of the act provides that persons of a specified size contemplating acquisitions of a specified size must file notification with the antitrust enforcement agencies and wait a designated period of time before consummating. The waiting period, designated in section 7A(b)(1) of the act, generally begins when both parties to the transaction file notification and ends thirty days later. Section 7A(b)(2) of the act empowers the Commission and the Assistant Attorney General to terminate the waiting period provided by section 7A(b)(1) of the act in particular transactions before it would otherwise expire. 15 U.S.C. 18a(b)(2). The act further specifies that when parties receive early termination of the waiting period the Commission and the Assistant Attorney General "promptly shall cause to be published in the **Federal Register** a notice that neither intends to take any action within such period with respect to such acquisition." *Id.* When the Commission promulgated the premerger notification rules it acknowledged this requirement. In § 803.11(c), the Commission stated that early termination would be effective upon notice to any requesting person by phone, that this communication would be confirmed in writing, and that "notice thereof shall be published in the **Federal Register** in accordance with section 7A(b)(2)." 16 CFR 803.11(c).

The statutory requirement that the Commission publish notice of grants of early termination indicates Congress' intent that this information should be made public promptly. This provision is one of the few exceptions to the broad grant of confidentiality accorded information filed with the enforcement agencies in connection with a premerger notification filing. *See* section 7A(h) of the act, 15 U.S.C. 18a(h). The legislative history does not reveal why Congress included this provision or what Congress intended to achieve by its inclusion. But the fact that it was included evidences Congress' willingness to depart from its policy of strict confidentiality to assure that information concerning the agencies' decisions not to take any action to prevent consummation of particular transactions be made public.

The present revision in § 803.11(c) reflects the Commission's practices administering the premerger notification program. Over the last six years, the Commission's Premerger Notification Office has sent a Notice to the **Federal Register** every two weeks listing early terminations granted during the preceding two-week period. This practice was adopted after the Commission issued its Formal Interpretation in August of 1982 eliminating the requirement that parties provide a business reason to qualify for early termination. As a result of the Formal Interpretation, requests for and grants of early termination increased significantly. (In FY 82 early termination was requested in 222 transactions and granted in 142, in FY 83 it was requested in 606 transactions and granted in 495, and in FY 88 it was requested in 2433 transactions and granted in 1880.) This change in procedure was adopted because of the time and expense to continue the prior practice of daily publication and a separate notice for each transaction.

While the practice of publishing notice every two weeks (rather than daily) is preferable administratively, it can result in delays. For example, there is a four-day delay between the time a Notice is sent to the **Federal Register** and the time it actually appears in print. Thus, publication occurs anywhere between four days and three weeks after the grant of early termination. Under this procedure, parties to a transaction may be informed of early termination several weeks before the public has access to this information through the **Federal Register.**

In part because of this delay, but primarily because this information was to be published soon in the **Federal Register,** it was determined early in the program's history that it was desirable and appropriate to make information about early terminations public in other ways as soon as the parties had been informed that early termination had been granted. As a result, the Premerger Notification Office has provided information about early terminations in response to telephone inquiries. The Premerger Notification Office also made available, in the Commission's Public Reference Section, a list of early terminations granted.

These dissemination procedures were discontinued this past summer. It appears that some investors could have profited from their knowledge and use of access to this information to the detriment of other investors who were unaware that the information was available. Upon learning of this

disparity of information, the Commission suspended these dissemination procedures until it could establish procedures to make the public at large aware of how the early terminations would be available, and the Commission could consider whether it was appropriate to release the information by methods other than the **Federal Register**.

The Commission has determined that sections 7A(b)(2) and 7A(h) do not preclude the use of means other than the **Federal Register** to make information about early terminations public. The reference in the act to publication in the **Federal Register** does not limit the release of this information exclusively to this means. This reference merely assures that the information will promptly be made public in some manner. So long as the information is published in the **Federal Register** the Commission is free also to make it public in other ways which are more efficient and less costly.

The Commission has determined that there is no reason why the public should not be informed of grants of early termination as soon as practicable. This is particularly true for transactions involving companies whose stock is publicly traded. One solution might be to publish more frequent notices in the **Federal Register**. But this would be very costly and would still result in delays of four days or more. The Commission has determined that making this information public through its Public Reference section is a less costly and more efficient alternative.

The present change in § 803.11(c) makes clear that the Commission may use other means to make public grants of early termination. The new language will put the public on notice that other procedures may be used to make this information public. The effective date of the new provision is delayed for 30 days so that persons filing notification will know that this information may be made public in ways in addition to the **Federal Register** before they request early termination.

The Commission will provide in the Public Reference Section of the Commission's headquarters each work day a list of transactions in which early termination was granted the previous work day. This information will also be made available through the Public Reference Section's telephone information system which can be reached using a touch tone phone by calling (202) 326–2222. The information will be available on a prerecorded message. These procedures will give the public access to this information without imposing an undue administrative burden on the Commission. Release of this information will supplement the current schedule of publication in the **Federal Register**. This information will not be available through the Premerger Notification Office. We note that several commercial reporting services have expressed interest in obtaining this information. Thus we expect that the information will be made available expeditiously by wire to their subscribers nationwide. The Commission will make information about early terminations available through additional means as they become available. In addition, the Commission may revise its public notice procedures in response to comments. The Commission specifically invites comments on the procedures it plans to adopt. We hope to receive comments as to how best to implement the procedures so that all members of the public are placed on equal footing. Future modifications will be publicly announced through the Public Reference Section and through press releases.

List of Subjects in 16 CFR Part 803

Antitrust.

Interim Rule

The Commission amends Title 16 Chapter I. Subpart H. The Code of Federal Regulations as follows:

PART 803—[AMENDED]

1. Authority. The authority citation for Part 803 continues to read as follows:

Authority: Sec. 7A(d) of the Clayton Act 15 U.S.C. 18a(d), as added by sec. 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435,. 90 Stat. 1390.

2. The Commission amends the rules by revising § 803.11(c) to read as follows:

§ 803.11 [Amended]

* * * * *

(c) The Federal Trade Commission and the Assistant Attorney General may in their discretion terminate a waiting period upon the written request of any person filing notification or, notwithstanding paragraph (a) of this section, sua sponte. A request for termination of the waiting period shall be sent to the offices designated in § 803.10(c). Termination shall be effective upon notice to any requesting person by telephone, and such notice shall be given as soon as possible. Such notice shall also be confirmed in writing to each person which has filed notification, and notice thereof shall be published in the **Federal Register** in accordance with section 7A(b)(2). The Federal Trade Commission and the Assistant Attorney General also may use other means to make the termination public, prior to publication in the **Federal Register** in a manner that will make the information equally accessible to all members of the public.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 89–11958 Filed 5–17–89; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 144

Underground Injection Control Program

CFR Correction

In the July 1, 1988 revision of Title 40 (Parts 100 to 149) of the Code of Federal Regulations, on page 613, second column, in paragraph (h) of § 144.1, the cite now reading "§ 256.430" should read "§ 265.430".

BILLING CODE 1505-02-M

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40 CFR Part 180

[PP 8F3665/R1027; FRL-3573-2]

Pesticide Tolerances for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a regulation to permit the residues of the herbicide glyphosate (*N*-(phosphonomethyl)-glycine) and its metabolite aminomethylphosphonic acid resulting from the application of the sodium sesqui salt for plant growth regulator purposes in or on peanuts at 0.1 part per million (ppm), peanut hay at 0.5 ppm, and peanut hulls at 0.5 ppm. The rule was requested by Monsanto Co.

EFFECTIVE DATE: May 18, 1989.

ADDRESS: Written objections, identified by the document control number (PP 8F3665/R1027), may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H–7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office location and telephone number: Room 243, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of October 12, 1988 (53 FR 39783), that announced that the Monsanto Co., 1101 17th Street NW., Washington, DC 20036, had submitted a pesticide petition (PP) 8F3665, proposing to amend 40 CFR 180.364 by establishing a regulation to permit residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) and its metabolite aminomethylphosphonic acid (AMPA) resulting from the application of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) and its metabolite aminomethylphosphonic acid (AMPA) resulting from the application of the sodium sesqui salt for plant growth regulator purposes in or on peanuts at 0.1 ppm, peanut hay at 0.5 ppm, and peanut hulls at 0.5 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The data submitted in support of the tolerances include a 2-year oncogenicity study in mice fed dosages of 0, 150, 750, and 4,500 milligrams/kilogram/day (mg/kg/day) with an equivocal (uncertain) oncogenic effect at 4,500 mg/kg/day; a chronic feeding/oncogenicity study in rats fed dosages of 0, 3, 10, and 31 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (highest dose tested [HDT]) and a systemic no-observed-effect level (NOEL) of 31 mg/kg/day; a 1-year chronic oral study in dogs fed dosage levels of 0, 20, 100, and 500 mg/kg/day with a NOEL of 500 mg/kg/day; a teratology study in rats given levels of 0, 300, 1,000 and 3,500 mg/kg/day with no teratogenic effects occurring up to and including 3,500 mg/kg/day (HDT), maternal and fetotoxic NOELs of 1,000 mg/kg/day; a teratology study in rabbits given dosage levels of 0, 75, 175, and 350 mg/kg/day with no teratogenic effects occurring up to and including 350 mg/kg/day (HDT), a maternal NOEL of 175 mg/kg/day, and a fetotoxic NOEL of 350 mg/kg/day (HDT); a three-generation reproduction study in rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with a NOEL of 10 mg/kg/day; a mutagenic test—chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S–9 activation); a mutagenic test—DNA repair in rat hepatocytes (negative); a mutagenicity test—*in vivo* bone marrow cytogenic in rats (negative); a mutagenicity test—rec assay with *B. subtilis* (negative); a mutagenicity test—reverse mutation with *S. typhimurium* (negative); a mutagenicity (Ames) test with *S. typhimurium* (negative); and a dominant lethal mutagenicity test in mice (negative).

The acceptable daily intake (ADI) based on the three-generation rat reproduction study (NOEL of 10 mg/kg/day) and using a hundredfold safety factor is calculated to be 0.1 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published and unpublished but approved tolerances is 0.005094 mg/kg/day, which utilizes 5.0 percent of the ADI. This revision does not increase the TMRC and will not increase the percentage of the ADI utilized.

Desirable data lacking are a repeat of the mouse and rat oncogenicity studies. There are currently no actions pending against the continued registration of this pesticide. No detectable residues of *N*-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the commodities for which tolerances are established. The oncogenic potential of glyphosate is not fully understood. Because of the equivocal (uncertain) nature of the oncogenic response in mice, the Agency referred the issue to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) for a "Weight of the Evidence" classification. After reviewing all available evidence, the SAP proposed that glyphosate be classified as a "Class D Oncogen" or having "inadequate animal evidence of oncogenicity," and recommended a Data Call-In for further studies in rats and/or mice to clarify unresolved questions. After a review of all available information, the Agency decided to classify glyphosate as a "Class D Oncogen" and also to request a repeat of the mouse oncogenicity study. Because of the large difference between the high dose tested in the rat and mouse oncogenicity studies, the rat oncogenicity study was rereviewed. The rereview indicated that a maximum tolerated dose (MTD) may not have been reached in that study. Therefore, the Agency decided to also request a repeat of the rat oncogenicity study at doses high enough to reach an MTD. The Agency's policy has been to issue new use registrations in which the resulting change in TMRC is less than 1 percent; however, any significant new use registrations will be handled on a case-by-case basis and may not be issued until issues in the Glyphosate Registration Standard have been resolved. Monsanto Co. has been notified of these conclusions and deficiencies by the Glyphosate Registration Standard dated June 30, 1986.

The nature of the residue in plants is adequately understood, and an adequate analytical method (gas-liquid chromatography with a flame photometric detector) is available for enforcement purposes in Volume II of the Food and Drug Administration Pesticide Analytical Manual. The established tolerances on liver and kidney of cattle, goats, hogs, horses, poultry, and sheep are considered adequate to cover residues of glyphosate and AMPA resulting from the proposed use of glyphosate sodium sesqui salt on peanuts.

Based on the information considered by the Agency, it is concluded that the tolerance established by amending 40 CFR Part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (40 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a.

2. Section 180.364 is amended by removing entries for the commodities peanuts; peanut, hay; and peanut, hulls from paragraph (a) and adding and alphabetically inserting them in paragraph (b), to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

* * * * *

(b) * * *

Commodities	Part per million
* * * * *	
Peanuts	0.1
Peanut, hay	0.5
Peanut, hulls	0.5
* * * * *	

[FR Doc. 89-12038 Filed 5-17-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 700

[OPTS-2600003; FRL-3571-9]

Fees for Processing Premanufacture Notices, Exemption Applications and Notices, and Significant New Use Notices; Change in Mailing Address

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; change.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to change the mailing address for remittance of user fees under section 5 of the Toxic Substances Control Act (TSCA). This amendment establishes a unique address for the remittance of these fees which should reduce delays in notifying appropriate EPA staff of user fee receipt.

EFFECTIVE DATE: May 18, 1989.

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

SUPPLEMENTARY INFORMATION: This change is being made to provide a unique mailing address for TSCA section 5 user fees. Previously, the address for TSCA section 5 user fees was the same as that for other fees submitted to EPA. The establishment of a mailing address unique for the remittance of section 5 user fees should reduce the delays in notifying appropriate EPA staff of user fee receipts. TSCA section 5 user fees that are sent to P.O. 360277M subsequent to the effective date of this amendment, will continue to be forwarded to EPA Headquarters for processing.

Because this is a non-substantive, procedural amendment, notice and comment are not necessary and this amendment becomes effective immediately upon publication in the **Federal Register.**

List of Subjects in 40 CFR Part 700

Chemicals, Environmental Protection, User fees.

Dated: May 4, 1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

Accordingly, 40 CFR Part 700 is amended as follows:

PART 700—[AMENDED]

1. The authority citation for Part 700 continues to read as follows:

Authority: 15 U.S.C. 2625.

2. In § 700.45 by revising paragraph (e)(2) to read as follows:

§ 700.45 Fee payments.

* * * * *

(e) * * *

(2) Each remittance shall be sent to the Environmental Protection Agency, HQ Accounting Operations Branch (PM-226), P.O. 360399M, Pittsburgh, PA 15251-6399, ATTN: TSCA User Fee.

* * * * *

[FR Doc. 89-11817 Filed 5-17-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 87-124; FCC 89-137]

Telephone Hearing Aid Compatibility

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends Part 68 of its rules to require nearly all telephones manufactured in or imported into the United States after August 16, 1989 to be hearing aid compatible. These rule modifications were made to ensure that hearing impaired persons have reasonable access to telecommunications services and equipment and to comply with the Hearing Aid Compatibility Act of 1988.

EFFECTIVE DATE: August 17, 1989.

FOR FURTHER INFORMATION CONTACT: Robert James, Common Carrier Bureau, (202) 634-1831.

SUPPLEMENTARY INFORMATION: This is a summary of the First Report and Order (FR&O) in CC Docket No. 87-124 adopted by the Commission on May 4, 1989, and released on May 11, 1989. The full text of the item may be examined in the Commission's Docket Branch, Room 230, 1919 M Street NW., Washington, DC, during regular business hours or purchased from the Commission's copy contractor; International Transcription Services, 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857-3800.

The Commission's current rules require telephones classified as "essential"—meaning telephones provided for emergency use, coin telephones and other telephones frequently used by the hearing impaired—be internally compatible with hearing aids. A number of parties have presented arguments to us suggesting that these rules may not be enough. In response, the Commission initiated CC Docket No. 87-124, to gather information on what, if any, additional rules or rule revisions are needed to assure that the disabled of America have reasonable access to telecommunications services. In the Notice of Proposed Rulemaking phase of this proceeding, the Commission proposed that the definition of "essential telephones" be expanded to include all credit card telephones and workplace telephones located in common areas likely to be used by hearing impaired employees.

On August 17, 1988, the "Hearing Aid Compatibility Act of 1988", Pub. L. 100-394 (HAC Act) was enacted. This law amends Section 710(b) of the Communications Act of 1934. It requires almost all telephones manufactured in or imported into this country more than one year after its enactment to be hearing aid compatible. The new law exempts refurbished, repaired or resold telephones, telephones used with public and private mobile radio services, and secure telephones used for classified communications. The HAC Act provides up to three years for cordless telephones to comply with the requirement. It directs the Commission to review the exceptions for public and private mobile telephones periodically and to rescind

them if they are no longer warranted. Also, the HAC Act grants the Commission authority to waive the hearing aid compatibility requirement with respect to new telephones if telephone manufacturers can demonstrate it is infeasible or too costly to meet this standard.

In response to the HAC Act, the Commission issued a Further Notice of Proposed Rulemaking (FNPRM) on February 16, 1989. In the FNPRM, the Commission proposed to codify rules which closely follow the HAC Act and to abandon its efforts to expand the definition of "essential" telephones. The decision to forego expansion of the essential telephone class was based on the language of the HAC Act which, over time, requires nearly all telephones to be hearing aid compatible. In this FR&O, the Commission amends Part 68 of its rules to comply with the HAC Act.

Estimated Average Burden Hours Per Response: 3 Hours

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Conclusion and Ordering Clauses

The new rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of these new rules will be subject to approval by the Office of Management and Budget as prescribed by the Act.

For the purposes of the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission certifies that this report and order will not have a substantial economic impact on a significant number of entities. Where alternative resolutions were available, we have chosen the least costly alternative and in some instances eliminated unnecessary requirements. This order fulfills the instructions of Congress described in the HAC Act.

Accordingly, it is ordered, pursuant to Sections 1 and 4(i) of the Communications Act, 47 U.S.C. 151 and 154(i), and the Hearing Aid Compatibility Act of 1988, Pub. L. 100–394, that Part 68 of the Commission's Rules is amended as shown at the end of this document effective August 17, 1989.

List of Subjects in 47 CFR Part 68

Definitions, Hearing aid compatible telephones, Waivers, Notice of Non-hearing aid compatibility.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 68 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations, Part 68) is amended as follows:

PART 68—[AMENDED]

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, 48 Stat. as amended, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 154, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, unless otherwise noted.

2. Section 68.3 is amended to add the following definitions:

§ 68.3. Definitions.

* * * * *

Essential Telephones: Means only coin-operated telephones, telephones provided for emergency use, and other telephones frequently needed for use by persons using such hearing aids.

* * * * *

Private Radio Services: Means private land mobile radio services and other communications services characterized by the Commission in its rules as private radio services.

Public Mobile Services: Means air-to-ground radiotelephone services, cellular radio telecommunications services, offshore radio, rural radio service, public land mobile telephone service, and other common carrier radio communications services covered by Part 22 of Title 47 of the Code of Federal Regulations.

* * * * *

Secure Telephones: Means telephones that are approved by the United States Government for the transmission of classified or sensitive voice communications.

* * * * *

3. Section 68.4 is revised to read as follows:

§ 68.4 Hearing aid-compatible telephones.

(a)(1) Except for telephones used with public mobile services, telephones used with private radio services, and cordless and secure telephones, every telephone manufactured in the United States (other than for export) or imported for use in the United States after August 16, 1989, must be hearing aid compatible. Every cordless telephone manufactured in the United States (other than for export) or imported into the United States after August 16, 1991, must be hearing aid compatible.

(2) Except as provided in § 68.112(c)(1) and (4), every telephone listed in § 68.112 shall be hearing aid-compatible.

(3) A telephone is hearing aid-compatible if it provides internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.

(4) The Commission shall revoke or otherwise limit the exemptions of paragraph (a)((1) of this section for telephones used with public mobile services or telephones used with private radio services if it determines that (i) such revocation or limitation is in the public interest; (ii) continuation of the exemption without such revocation or limitation would have an adverse effect on hearing-impaired individuals; (iii) compliance with the requirements of § 68.4(a)(1) is technologically feasible for the telephones to which the exemption applies; and (iv) compliance with the requirements of § 68.4(a)(1) would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed.

4. Section 68.5 is added to read as follows:

§ 68.5 Waivers.

The Commission may, upon the application of any interested person, initiate a proceeding to waive the requirements of § 68.4(a)(1) with respect to new telephones, or telephones associated with a new technology or service. The Commission shall not grant such a waiver unless it determines, on the basis of evidence in the record of such proceeding, that such telephones, or such technology or service, are in the public interest, and that (a) compliance with the requirements of § 68.4(a)(1) is technologically infeasible, or (b) compliance with such requirements would increase the costs of the telephones, or of the technology or service, to such an extent that such telephones, technology, or service could not be successfully marketed. In any proceeding under this section to grant a waiver from the requirements of § 68.4(a)(1), the Commission shall consider the effect on hearing-impaired

individuals of granting the waiver. The Commission shall periodically review and determine the continuing need for any waiver granted pursuant to this section.

5. Section 68.224 is revised to read as follows:

§ 68.224 Notice of non-hearing aid compatibility.

Every non-hearing aid compatible telephone offered for sale to the public on or after August 17, 1989, whether previously-registered, newly registered or refurbished shall:

(a) Contain in a conspicuous location on the surface of its packaging a statement that the telephone is not hearing aid-compatible, as is defined in § 68.4(a)(3) of these rules, or if offered for sale without a surrounding package, shall be affixed with a written statement that the telephone is not hearing aid-compatible, as defined in § 68.4(a)(3) of these rules; and

(b) Be accompanied by instructions in accordance with § 68.218(b)(5) of the rules.

[FR Doc. 89-11849 Filed 5-17-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 95
Thursday, May 18, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-14]

Proposed Alteration of VOR Federal Airways and Compulsory Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of all Federal Airways located in the vicinity of Georgia and Florida that will be affected by the name change of Toccoa, GA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) to Foothills, SC, VORTAC; Albany, GA, VORTAC to Pecan, GA, VORTAC; and Jacksonville, FL, VORTAC to Craig, GA, VORTAC. The Toccoa VORTAC is physically located in South Carolina. The actual site of the VORTAC is not being changed. Also, some Compulsory Reporting Points will be affected.

DATE: Comments must be received on or before June 30, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 89-ASO-14, Federal Aviation Administration, P. O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

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, aeronautical, 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-ASO-14." 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 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 Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list of 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 Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several VOR Federal Airways and Compulsory Reporting Points that will be affected by the name changes of Toccoa, GA, VORTAC to Foothills, SC, VORTAC; Albany, GA, VORTAC to Pecan, GA, VORTAC; and Jacksonville, FL, VORTAC to Craig, FL, VORTAC. The actual VORTAC sites are not being changed. This action is in support of the name changes and the changes in some Compulsory Reporting Points. Sections 71.123 and 71.203 of Part 71 of the Federal Aviation Regulations were 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, VOR Federal airways, Compulsory reporting points.

The Proposed Amendment

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

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-222, V-325, V-415, V-463 [Amended]

Wherever the word "Toccoa" appears, substitute the word "Foothills" Wherever the words "Toccoa, GA" appear, substitute the words "Foothills, SC".

V-5, V-35, V-97, V-159, V-321, V-578 [Amended]

Wherever the word "Albany" appears, substitute the word "Pecan".

V-1, V-37, V-51, V-198, V-243, V-267 [Amended]

Wherever the word "Jacksonville" appears, substitute the word "Craig".

§ 71.203 [Amended]

3. Section 71.203 is amended as follows:

Albany, GA [Removed]

Jacksonville, FL [Removed]

GRANT [Amended]

By removing the word "Albany" and substituting the word "Pecan".

Issued in Washington, DC, on May 8, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-11916 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANM-21]

Alteration of Yakima, Washington, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the Yakima, Washington, Control Zone from full-time to part-time. The National Weather Service Office notified the Federal Aviation Administration (FAA) that on or about January 15, 1989, the 24 hour a day weather service at Yakima Air Terminal would be reduced to 16 hours per day. The action took place February 9, 1989. This action was necessitated by severe budgetary constraints imposed on the Weather Service Office.

DATE: Comments must be received on or before June 19, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-21, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined at the same address. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM-535, Federal Aviation Administration, Docket No. 88-ANM-21, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2576.

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, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submited in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-21". 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 any 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 at the address listed above 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, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. 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 11-2A which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the status of the Yakima, Washington, Control Zone from full-time to part-time. A reduction in personnel staffing of the Yakima, Washington National Weather Service Office has resulted in weather observations not being available 24 hours per day. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulations 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, if promulgated, will not have a significant impact, positive or negative, 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, Control zones.

The Proposed Amendment

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

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

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

Authority: 49 U.S.C.1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g)

(Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Yakima, Washington, Control Zone [Amended]

Add "The control zone shall be effective during the specified dates and times established in advance by a Notice to Airmen." The effective date and time will thereafter be continuously established and published in the Airport/Facility Directory.

Issued in Seattle, Washington, on April 27, 1989.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 89-11921 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 89-ASO-15]

Proposed Alteration of Jet Routes and Compulsory Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of all jet routes located in the vicinity of Georgia and Florida that will be affected by the name change of Toccoa, GA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) to Foothills, SC, VORTAC, and by the name change of Jacksonville, FL, VORTAC to Craig, FL, VORTAC. The Toccoa VORTAC is physically located in South Carolina. The actual site for the VORTAC is not being changed. Also, some Compulsory Reporting Points will be affected.

DATE: Comments must be received on or before June 30, 1989.

ADDRESSES: Send comments on the proposed in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 89-ASO-15, Federal Aviation Administration, P. O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

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 proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposals. 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 submt with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-15." 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 proposals 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 both before and after the closing date for comments. A report summarizing each substantive public 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 Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list of 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 amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of several jet routes that will be affected by the name changes of Toccoa, GA, VORTAC to Foothills, SC, VORTAC, and by changing the name of Jacksonville, FL, VORTAC to Craig, FL, VORTAC. The Toccoa VORTAC is actually located in South Carolina. The actual VORTAC site is not being changed. This action is in support of the name changes and the changes in some Compulsory Reporting Points. Sections 71.207, 71.209 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were 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 Parts 71 and 75

Aviation safety, Compulsory reporting points, Jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) 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.

§ 71.207 [Amended]

2. Section 71.207 is amended as follows:

Jacksonville, FL [Removed]

Craig, FL [New]

§ 71.209 [Amended]

3. Section 71.209 is amended as follows:

CARPS [Amended]

By removing the word "Jacksonville" and substituting the word "Craig".

SQUID [Amended]

By removing the word "Jacksonville" and substituting the word "Craig".

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

4. The authority citation for Part 75 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.

§ 75.100 [Amended]

5. Section 75.100 is amended as follows:

J-48, J-145, J-186 [Amended]

Wherever the words "Toccoa, GA" appear, substitute the words "Foothills, SC".

J-45, J-51, J-53, J-55, J-121, J-174 [Amended]

Wherever the word "Jacksonville" appears, substitute the word "Craig".

Issued in Washington, DC, on May 8, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-11920 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 862 3125]

Nutritone, Inc., d/b/a Body By Design, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Massachusetts corporation from making certain claims for electric muscle stimulation ("EMS") treatment programs and products unless they possess reliable scientific evidence that substantiates such claims. Respondent would be required to retain records supporting any future advertising and also would be required to post a copy of the order on the premises.

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

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 10 Causeway St., Room 1184, Boston, Ma. 02222-1073. (617) 565-7240.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Electric muscle stimulation treatments, Health clubs, Trade practices.

In the matter of Nutritone, Inc., a corporation, trading and doing business as BODY BY DESIGN, and Dinah H. Simonini, and Donald L. Simonini, individually, and as officers of the corporation

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nutritone, Inc., a corporation, d/b/a Body By Design, and Dinah H. Simonini and Donald L. Simonini, individually and as officers of Nutritone, Inc., and it now appearing that Nutritone, Inc., and Dinah H. Simonini and Donald L. Simonini, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Nutritone, Inc., and Dinah H. Simonini and Donald L. Simonini, individually and as officers of Nutritone, Inc., and their counsel, and counsel for the Federal Trade Commission that:

1. Nutritone, Inc., hereinafter referred to as the corporation, is a corporation organized existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business at 1172 Beacon Street, Newton, Massachusetts 02161.

2. Proposed respondents Dinah H. Simonini and Donald L. Simonini are officers of the corporate respondent named herein. They have formulated, directed and controlled the acts and practices of the corporation, including all the acts and practices set forth below. Their address is the same as that of the corporate respondent.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of the complaint here attached.

4. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of the findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same

force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered That respondents Nutritone, Inc., a corporation, its officers, and Dinah H. Simonini and Donald L. Simonini, individually and as officers of the corporation, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any electric muscle stimulation treatment program or product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist form representing, directly or by implication, contrary to fact, that any low frequency (1000 Hz and below) electric muscle stimulation treatment or product:

A. Can cause muscle contractions of similar intensity to those produced by conventional exercise.

B. Will visibly change the girth of any part of the body without a reduction in caloric intake or participation in a weight loss program.

C. Provides similar or superior health benefits to those produced by rigorous conventional exercise for normal healthy people.

D. Provides, in the same or shorter time period, health benefits similar or superior to those produced by conventional exercise.

E. Are a result of any new or recent scientific and technological research and experimentation.

II.

It is further ordered That respondents Nutritone, Inc., a corporation, its officers, and Dinah H. Simonini and Donald L. Simonini, individually and as officers of the corporation, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any diet, strength development, or fitness program or product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, concerning such program's or product's efficacy, or comparability or superiority over any other program(s) or product(s), or the results typically achieved by any consumer(s) of the program or product unless, at the time of making such representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; provided, however, that for purposes of this Order for any test, analysis, research, study, or other evidence to be "competent and reliable" it must be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

It is further ordered That resondents shall for at least five years after the date of the last dissemination of the representation, maintain and upon reasonable request make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials that were relied upon by respondents in disseminating any representation covered by this order.

2. All test reports, studies, surveys, or demonstrations in their possession or control that contradict any representation that is covered by this order.

IV.

It is further ordered That respondents shall conspiciously post a copy of this order on their premises.

V.

It is further ordered That the corporate respondent and the individual respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidaries or any other change in the corporation which may affect compliance obligations arising out of the order, or of any change in the position or responsibilities of Dinah H. Simonini or Donald L.Simonini in regard to any corporation or subsidiary of which either is an officer and which corporation or subsidiary is, directly or indirectly, involved in the sale or distribution of any electric muscle stimulation treatment program or product.

VI.

It is further ordered That the respondents shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with is order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Nutritone, Inc., a corporation, d/b/a Body By Design, and Dinah H. Simonini and Donald L. Simonini, officers of Nutritone, Inc. (collectively, the "respondents"). Under this agreement, the respondents will cease and desist from making certain claims for treatment programs and products unless they possess reliable scientific evidence that substantiates such claims.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the proposed order contained in the agreement.

This matter concerns advertisements for electric muscle stimulation treatment programs and products. The Complaint accompanying the proposed consent order alleges that, in connection with promoting these treatment programs and products, the respondents engaged in deceptive acts and practices in violation

of section 5 of the Federal Trade Commission Act and that the respondents disseminated false advertisements in violation of section 12 of the Federal Trade Commission Act. According to the Complaint, the respondents represented that these treatment programs and products would cause muscle contractions comparable to those resulting from conventional exercise such as situps and pushups. They also claimed that the treatments would result in a "V" shape for men and tone stomachs, thighs and buttocks.

The Complaint also alleges that the advertisements were deceptive because the respondents represented to consumers that they possessed a reasonable basis for the challenged representations when, in fact, respondents had no reasonable basis for these representations.

The consent order contains provisions designed to prevent the respondents from engaging in similar allegedly illegal acts and practices in the future.

Specifically, Part I of the order prohibits the respondents from representing that any electric muscle stimulation treatment or product will:

1. Cause muscle contractions similar to those produced by exercise.
2. Will visibly change the girth or any part of the body without a reduction in caloric intake or participation in a weight loss program.
3. Provide similar or superior health benefits to those produced by rigorous conventional exercise.
4. Provide, in the same or shorter time period, health benefits similar or superior to those produced by conventional exercise. Part I also prohibits respondents from claiming that EMS treatments or products are the result of any new or recent scientific and technological research and experimentation.

Part II of the order prohibits the respondents from representing that any diet, strength development, or fitness program or product will provide certain benefits or is comparable or superior to other programs or products unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Part III of the order requires the respondents to (1) retain records supporting any future advertising and (2) retain any records that contradict any such advertising.

Part IV of the order requires the respondents to post a copy of the order on the premises.

Finally, Part V of the order requires the corporate respondent and the individual respondents to give prior notification to the Federal Trade Commission of any changes or sale of the corporate respondent. The individual respondents must also notify the Commission in the event they change positions or responsibilities in any corporation that is involved in electric muscle stimulation programs or products and in which either individual respondent is an officer.

Donald S. Clark,

Secretary.

[FR Doc. 89-11947 Filed 5-17-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

RIN 1545-AK41

Minimum Coverage Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986. They reflect changes made by the Tax Reform Act of 1986. This document also contains amendments to previously proposed regulations relating to the minimum participation requirements under section 401(a)(26) of the Code. These regulations will provide the public with guidance necessary to comply with the law and would affect sponsors of and participants in pension, profit-sharing and stock bonus plans and certain other employee benefit plans.

DATES: Written comments and requests for a public hearing must be delivered or mailed July 17, 1989. These regulations are proposed to be effective for plan years commencing on or after January 1, 1989, except as set forth in proposed § 1.410(b)-10.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Attention: CC:CORP:TR (EE-128-86) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Nancy J. Marks, 202-343-6954 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Submission to Small Business Administration

Pursuant to section 7805(f) of the Code, the rules proposed in this document will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 410(b) of the Internal Revenue Code of 1986 (Code). These amendments are proposed to conform the regulations to section 1112(a) of the Tax Reform Act of 1986 (TRA '86) (100 Stat. 2448).

Overview of Provisions

Section 1112(a) of TRA '86 amended section 410(b) to modify the minimum coverage rules applicable to qualified plans. The new rules generally are effective for plan years beginning after December 31, 1988. Under the new coverage rules, a plan is a qualified plan only if it satisfies at least one of three minimum coverage tests: (1) The percentage test; (2) the ratio test; and (3) the average benefit test.

Under the percentage test, a plan must benefit at least 70 percent of the employer's nonhighly compensated employees. Under the ratio test, a plan must benefit a percentage of the nonhighly compensated employees that is at least 70 percent of the percentage of the highly compensated employees who benefit under the plan. Finally, under the average benefit test, a plan must benefit a classification of employees that the Secretary finds not to be discriminatory in favor of highly compensated employees (nondiscriminatory classification test) and the average benefit percentage of the nonhighly compensated employees must be at least 70 percent of the average benefit percentage of the highly compensated employees (average benefit percentage test).

By adding the average benefit test to section 410(b), TRA '86 effectively combined the section 410(b) minimum coverage rules and the section 401(a)(4) general nondiscrimination rules. The legislative history to TRA '86 indicates that the average benefit percentage test generally is to be applied in the same manner as the general nondiscrimination rules have been applied with respect to the amount of contributions or benefits under an employer's qualified plans.

Before TRA '86, the primary statement of the Service on the calculation of the amount of contributions and benefits was Rev. Rul. 81-202, 1981-2 C.B. 93. The legislative history to TRA '86 indicates that, in general, the approach of Rev. Rul. 81-202 is to form the basis for applying the average benefit

percentage test. In this respect, however, the legislative history also indicates that the Service is to modify the Rev. Rul. 81–202 approach, both for purposes of the average benefits test and for purposes of determining whether two or more plans that are treated as a single plan for purposes of section 410(b) discriminate in favor of highly compensated employees under section 401(a)(4). Also, the legislative history indicates that the approach developed by the Service is to be the exclusive approach for applying the average benefit percentage and general nondiscrimination tests.

The Service is developing interrelated regulations under sections 410(b) and 401(a)(4) addressing the minimum coverage rules of the former and the general nondiscrimination rules of the latter. These interrelated regulations generally reflect the basic view that, even though there are two statutory provisions that govern nondiscrimination—section 410(b) for coverage and section 401(a)(4) for contributions and benefits—these statutory provisions are substantially interwoven, focus on similar issues and require substantially similar determinations. Indeed, as a practical matter, the interaction between these two provisions results in a coordinated nondiscrimination rule for qualified plans. In general, this rule requires that a nondiscriminatory group of employees actually benefit under one or more of an employer's qualified plans at each level of contribution or benefit and with respect to each other benefit, right or feature.

These proposed regulations address only whether the group of employees who benefit under the plan at any level of contribution or benefit satisfies the section 410(b) minimum coverage requirement. Other nondiscrimination issues, such as the method for determining whether contributions or benefits satisfy section 401(a)(4) and guidance on the average benefit percentage test of section 410(b), will be addressed in forthcoming regulations.

Section 410(b) Minimum Coverage Requirements

The proposed regulations provide that, in order to satisfy section 410(b) for a plan year, a plan must satisfy one of two requirements for the plan year: (1) The percentage of the nonhighly compensated employees benefiting under the plan must be at least 70 percent of the percentage of the highly compensated employees benefiting under the plan (the ratio percentage test) or (2) the plan benefits a classification of employees that the Secretary finds not to be discriminatory in favor of highly compensated employees (the nondiscriminatory classification test) and the average benefit percentage of the nonhighly compensated employees is at least 70 percent of the average benefit percentage of the highly compensated employees (the average benefit percentage test). (Together, the nondiscriminatory classification test and the average benefit percentage test are referred to as the average benefit test.) The ratio percentage test encompasses both the percentage test and ratio test of sections 410(b)(1)(A) and 410(b)(1)(B), respectively; if a plan satisfies the statutory percentage test of section 410(b)(1)(A), it will necessarily also satisfy the ratio test of section 410(b)(1)(B).

Multiple employer plans must satisfy the requirements of section 410(b) on an employer-by-employer basis rather than on the basis of participating employers in the aggregate. Failure to satisfy the requirements of section 410(b) with respect to any component of this testing process may result in disqualification of the plan for all participating employers. The proposed regulation does not provide an exception to this rule. However, in a proper case, the Commissioner could retain the plan's qualified status for innocent employers by requiring corrective and remedial action with respect to the plan such as allowing the withdrawal of an offending employer, allowing a disqualifying defect to be cured within a reasonable period of time after the plan administrator has or should have had knowledge of such disqualifying event or was otherwise notified by the Internal Revenue Service of the disqualifying defects, or requiring plan amendments to prevent future disqualifying events.

1. Employees Benefiting under the Plan

Under the proposed regulations, an employee is "benefiting" under a plan for a year only if the employee accrues a benefit under the plan for such year. Thus, an employee generally is not benefiting under a plan merely because the employee is currently eligible to receive an allocation or to accrue a benefit under the plan. Similarly, an employee who has an accrued benefit under a plan generally is not benefiting under the plan if the employee is not currently receiving an allocation or accruing an additional benefit under the plan.

The proposed regulations include a special rule pursuant to section 410(b)(6)(B) for plans to which elective contributions or after-tax employee contributions and matching contributions subject to section 401(k) or 401(m) may be made. Under this rule, an employee is benefiting only if the employee is eligible currently to make such elective contributions (in the case of the 401(k) feature) or to make after-tax employee contributions or receive matching contributions (in the case of the 401(m) feature). Also, there is a special rule for plans under which no employee is eligible to accrue any additional benefit. Such a plan is treated as satisfying the coverage requirements.

The position that a current accrual or allocation is necessary in order for an employee to be treated as benefiting is consistent with the explicit statutory rule for section 401(k) or 401(m) contributions in section 410(b)(6)(E). If eligibility to make a section 401(k) contribution were, by itself, sufficient to treat an employee as benefiting under a plan, there would be no need for a special statutory rule to achieve this result.

Requiring a current benefit is also consistent with the approach taken in the proposed regulations under section 401(a)(26). Under those proposed regulations, an employee is not treated as currently benefiting unless the employee receives a current accrual of benefits.

Commentators on the proposed section 401(a)(26) regulations have indicated the desirability of a minimum service requirement for ease in plan administration. However, a minimum service requirement may result in employees failing to benefit under the plan and may, therefore, cause the plan to fail to satisfy the minimum participation requirements in operation. The same issues arise under the minimum coverage requirements of section 410(b).

In response to these comments, these proposed regulations provide a special minimum service accrual rule. Under this rule, a participant will be treated as an excludable employee under the plan if the participant fails to accrue a benefit or receive an allocation solely because of a minimum service requirement or a requirement that the employee be employed on the last day of the plan year and the participant terminates employment with not more than 500 hours of service. A similar rule is added to the proposed regulations under section 401(a)(26). This design-based rule enables an employer to impose a minimum service requirement for purposes of ease of plan administration thereby lessening the risk that employee turnover may cause the plan to fail in operation. Thus, for example, a plan, including a standardized plan, that otherwise benefits all employees of an

employer but provides that employees who terminate from employment and complete less than 501 hours of service in a plan year will not accrue a benefit for such year is treated as benefiting 100 percent of the employer's employees.

In determining whether a plan satisfies the minimum coverage requirements of section 410(b), employees who receive no accrual or allocation by reason of a minimum service requirement or by reason of a requirement of employment on the last day of the year (other than one falling within the scope of the special minimum service accrual rule for terminating employees) must be treated as not benefiting under the plan unless they are otherwise excludable. Thus, plans under which employees fail to accrue benefits or receive allocations by reason of such provisions will not be assured of satisfying section 410(b) even if all employees are eligible under the plan.

Under a transitional rule for plan years commencing during 1989, employers may treat employees as benefiting under a plan for purposes of sections 410(b) and 401(a)(26) if such employees fail to accrue a benefit or receive an allocation solely by reason of failing to accrue 1000 hours of service or failing to be employed by the employer on the last day of the plan year.

To the extent that revenue rulings 76–250, 1976–2 C.B. 124, and 81–210, 1981–2 C.B. 89, conflict with the general rule that an employee is treated as benefiting for purposes of section 410(b) only if the employee actually accrues a benefit or receives an allocation, they are superseded.

2. Nondiscriminatory Classification Test

The proposed regulations set forth a three-part test for purposes of determining whether a group of employees constitutes a nondiscriminatory classification. First, the regulations require that a classification of employees be reasonable, which means that it must reflect a bona fide business classification of employees, such as salaried employees and hourly employees, rather than a classification designed to increase qualified plan benefit disparities. This determination is to be made on a facts-and-circumstances basis.

Second, the proposed regulations include an objective test for determining whether a reasonable classification is nondiscriminatory. This objective test has both a safe harbor and an unsafe harbor for determining whether a classification is nondiscriminatory. Also, the proposed regulations include a facts-and-circumstances nondiscrimination test for those cases that fall between the safe and unsafe harbors.

In the past, the nondiscriminatory classification test generally has been applied on a facts-and-circumstances basis. The new minimum coverage rules and the objective approach to the nondiscriminatory classification test are intended to minimize the uncertainty employers have experienced in applying the facts and circumstances approach. For example, TRA '86 applies a new objective definition of highly compensated employee (under section 414(q)) and extends the excludable employee provision to the nondiscriminatory classification test. Similarly, the proposed regulations provide an objective approach to nondiscriminatory classifications to assure that nondiscrimination standards apply more evenly to employers and to provide employers with greater certainty in planning and administering their plans. The objective test is generally based upon the nondiscriminatory classification standards contained in the Service's formal guidance and is intended to enhance the uniform and equitable application of these standards.

The standard for applying the nondiscriminatory classification test, reflected in current regulations under section 410(b) (see § 1.410(b)–1(d)(2)), is whether there is more than a reasonable difference between (1) the percentage of the employer's highly compensated employees who benefit under the plan (the highly compensated employee benefiting percentage) and (2) the percentage of the employer's nonhighly compensated employees who benefit under the plan (the nonhighly compensated employee benefiting percentage).

Under the proposed regulations, the determination of whether or not a plan's classification is nondiscriminatory is based on satisfying, or failing to satisfy, a safe harbor or an unsafe harbor, respectiveiy. The objective safe and unsafe harbors are based on two factors: (1) The ratio of the percentage of the employer's nonhighly compensated employees who benefit under the plan to the percentage of the employer's highly compensated employees who benefit under the plan and (2) the percentage of all of the employees of the employer who are not highly compensated employees (concentration percentage).

The safe harbor test is met if the percentage of the employer's nonhighly compensated employees who benefit under the plan is at least 50 percent of the percentage of the employer's highly compensated employees who benefit under the plan. As the concentration percentage increases, the safe harbor test may also be met when the ratio percentage drops below 50 percent. Thus, as the concentration percentage increases from 60 to 99 percent, the ratio percentage drops proportionally from 50 percent to 20.75 percent.

The proposed regulations provide an unsafe harbor under which a classification is found to be discriminatory if the percentage of the employer's nonhighly compensated employees who benefit under the plan is less than 40 percent of the percentage of the employer's highly compensated employees who benefit under the plan. The ratio percentage decreases proportionally from 40 percent to 20 percent as the concentration percentage increases from 60 to 99 percent.

If a plan's coverage falls between the safe and unsafe harbors, the relevant facts and circumstances of the particular employer must be examined to determine whether the plan's classification is nondiscriminatory. Among the factors that will be examined are (1) the underlying business reason for the classification, (2) the percentage of the employer's work force benefiting under the plan, (3) whether the number of covered employees in each salary range is representative of the total number of the employer's employees in such salary range, and (4) how close the classification comes to satisfying the safe harbor percentage.

The nondiscriminatory classification test is applicable not only with respect to the section 410(b) minimum coverage rules, but also is incorporated into various other employee benefit provisions of the tax law. For example, under section 410(b)(5)(B) and section 89(g)(5), an employer's pension or health plan must benefit a nondiscriminatory classification of employees as a precondition to the use of the separate line of business rules of section 414(r). Also, section 125(b)(1) requires that a cafeteria plan benefit a nondiscriminatory classification of employees. See also sections 120(c)(3), 127(b)(3), and 129(d)(4). The tests in these proposed regulations with respect to the nondiscriminatory classification test as it applies under section 410(b) (including the transition relief) are applicable with respect to all of these provisions, except sections 89, 410(b)(5)(B) and 414(r), until other guidance is provided with respect to these provisions.

3. Excludable Employees

The proposed regulations provide guidance relating to those employees who may be disregarded—the excludable employees—in applying section 410(b). One area relates to the treatment of employees who do not benefit under a plan maintained pursuant to a collective bargaining agreement ("nonunion employees") when testing a plan that benefits union employees. The proposed regulations clarify that nonunion employees are excludable employees for purposes of testing a plan that benefits union employees. The proposed regulations thus continue the rule in effect under section 413(b) for testing collectively bargained plans. However, certain plans that benefit more than 2 percent professional employees are not treated as collectively bargained plans.

4. Definition of Plan and Rules for Plan Aggregation and Disaggregation

The proposed regulations provide extensive guidance on the definition of a plan for purposes of section 41D(b). The determination of the plan for purposes of section 410(b) may, in certain circumstances, involve several steps of analysis.

First, in general, each single plan determined under the rules of section 414(l) is a separate plan for purposes of section 410(b).

Second, certain single plans under section 414(l) must be treated as comprising, or be disaggregated into, two or more separate plans each of which must satisfy section 410(b). These mandatory disaggregation rules reflect the rules governing whether certain different types of plans may be aggregated for purposes of sections 410(b) and 401(a)(4) and are designed to prevent employers from accomplishing through one plan a result that cannot be accomplished through two or more plans. For example, the portion of a plan that benefits employees under a collective bargaining agreement and the portion of the plan that benefits nonunion employees are to be treated as separate plans. Similarly, the portion of a plan that is an employee stock ownership plan (ESOP) must be treated as a separate plan from the non-ESOP portion of such plan. Finally, the portions of a plan that include a cash or deferred arrangement subject to section 401(k) or matching and employee contributions subject to section 401(m) are treated as separate plans from the remaining portion of such plan.

Third, for purposes of applying the ratio percentage test and nondiscriminatory classification test, two or more separate plans (determined after application of the preceding steps) may be treated as a single plan for purposes of section 410(b). However, there are certain limits to this permissive aggregation. These limits generally reflect the mandatory disaggregation rules described in the preceding step.

Fourth, for purposes of the average benefit percentage test, all plans (including deemed separate plans) of an employer that may be aggregated under the permissive aggregation rules must be aggregated and treated as a single plan. In addition, qualified cash or deferred arrangements and matching contributions subject to section 401(m) are aggregated with other plans.

5. Separate Lines of Business

The proposed regulations do not address the rules for determining whether an employer (determined after application of section 414 (b), (c), (m) and (o)) may be treated as comprising two or more separate lines of business for purposes of section 410(b). These rules are the subject of future regulations under section 414(r). However, the proposed regulations do indicate that for purposes of the excludable employee and plan disaggregation and aggregation rules, if an employer may be treated as operating two or more separate lines of business and elects to apply section 410(b) separately to such lines of business under section 414(r), each such separate line of business will be treated as a separate employer. Thus, except for the nondiscriminatory classification test, in testing a plan that benefits the employees of one separate line of business, the employees of other separate lines of business are excludable employees. Nevertheless, an employer may elect to combine one or more separate lines of business for purposes of satisfying section 410(b).

6. Governmental Plans and Section 403(b) Contracts

Since August 1977 (see News Release IR–1869 dated August 10, 1977), the Service has not raised the issue of nondiscrimination under section 410 or 401(a)(4) in the case of governmental plans. Beginning with the 1989 plan year, governmental plans must satisfy the applicable nondiscrimination requirements. In lieu of satisfying section 410(b), governmental plans and church plans must satisfy section 401(a)(3), as in effect prior to the enactment of the Employee Retirement Income Security Act of 1974 (ERISA).

Governmental and church plans that use section 403(b) annuity contracts must, pursuant to section 403(b)(12), satisfy the new coverage rules. Since section 410(c) does not apply to such plans, satisfaction of section 401(a)(3) as in effect pre-ERISA does not satisfy section 403(b)(12). However, such plans may continue to rely on the safe harbors published in Notice 89-23, 1989–8 I.R.B. 25, in satisfying section 403(b)(12).

Section 401(a)(26) Minimum Participation Requirements

Proposed regulations under section 401(a)(26) that were published on February 14, 1989, (54 FR 6710) are amended in response to comments in the following five respects. First, proposed § 1.401(a)(26)–1 is amended to provide that defined contribution plans that presently benefit only nonhighly compensated employees may satisfy the section 401(a)(26) exception applicable to plans covering only nonhighly compensated employees without regard to whether they benefited highly compensated employees during the 5 immediately preceding plan years. Thus, for example, a defined contribution plan that benefited both highly compensated and nonhighly compensated employees prior to the 1989 plan year, but freezes benefit allocations for highly compensated employees and benefits only nonhighly compensated employees commencing with the first plan year beginning on or after January 1, 1989, satisfies section 401(a)(26) without regard to the number of employees benefiting.

Second, proposed § 1.401(a)(26)–2 is revised to provide an exception from the general rule that differences in the rates of benefit accrual result in separate benefit structures. The exception is for ad hoc cost of living adjustment formulas that contain such differences as a result of reasonable efforts to adjust the benefits of former employees to reflect the extent of the change in the cost of living since each employee's date of retirement or commencement of benefit. In general, use of reasonable groupings based on retirement date or benefit commencement is consistent with the scope of this exception.

Third, proposed § 1.401(a)(26)–3 is revised to provide a special minimum service rule for terminating employees consistent with the rule provided in the proposed regulations under section 410(b).

Fourth, a transition rule is added to proposed § 1.401(a)(26)–8 for cash or deferred arrangements within the meaning of section 401(k). Pursuant to this rule eligibility to make elective contributions under a qualified cash or deferred arrangement (defined under

section 401(k)) pursuant to plan provisions as adopted and in effect on or before June 19, 1989, but not after such date, may be disregarded for purposes of satisfying the requirements of section 401(a)(26). Thus, for example, such a plan that has a 1989 plan year commencing prior to June 19, 1989, may be amended to comply with the requirements of section 401(a)(26) by expanding coverage or amending provisions with respect to elective contributions prospectively from June 19, 1989.

Finally, proposed § 1.401(a)(26)–8 is further amended to provide a transition rule for certain early retirement "windowperiod" provisions and for determining who benefits under a plan.

Effective Dates and Transition Rules

In general, the new minimum coverage rules apply for plan years beginning after December 31, 1988. In the case of a plan maintained pursuant to one or more collective bargaining agreements, the new rules do not apply to plan years beginning before the earlier of (1) the later of January 1, 1989, or the date on which the last of the collective bargaining agreements in effect on February 28, 1986, terminates, or (2) January 1, 1991.

The proposed regulations provide, however, that the employer may elect not to apply the objective tests applicable to determining whether an employer's plan benefits a nondiscriminatory classification of an employer's employees for plan years beginning before January 1, 1990. Thus, for plan years beginning in 1989, the employer may elect to apply the pre-TRA '86 facts-and-circumstances standards. This transition relief applies for purposes of all provisions (e.g., section 125) to which the nondiscriminatory classification test applies.

Reliance on These Proposed Regulations

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. These regulations will be generally effective for plan years beginning after 1988. If future regulations are more restrictive, such guidance will be applied without retroactive effect.

Regulatory Impact Analysis

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request 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 Nancy J. Marks, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.401–0—1.425–1

Employee benefit plans, Employee Stock Ownership Plans, Income taxes, Individual retirement accounts, Pensions, Stock options.

PART 1—[AMENDED]

Proposed Amendments to the Regulations

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

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

Authority: 26 U.S.C. 7805 * * *
§§ 1.410(b)–2 through 10 also issued under 26 U.S.C. 410(b)(6).

Par. 2. Section 1.401(a)(26)–1 as proposed on February 14, 1989 (54 FR 6710), is amended by revising the first sentence of paragraph (d)(1)(i) to read as follows:

§ 1.401(a)(26)–1 Minimum participation rule.

* * * * *

(d) *Exceptions*—(1) *Plans that do not benefit any highly compensated employees*—(i) *General rule.* A plan is deemed to satisfy section 401(a)(26) for a plan year if such plan is not a top-heavy plan under section 416 for such plan year and such plan (and any predecessor plan), in the case of a defined contribution plan, does not currently benefit for such plan year and, in the case of a defined benefit plan, does not benefit for such plan year or any of the immediately preceding 5 plan years any active or former employee who is or ever has been a highly compensated employee of the employer (either as an active employee, former employee, or both). * * *

* * * * *

Par. 3. Section 1.401(a)(26)–2 as proposed on February 14, 1989 (54 FR 6710), is amended by adding a new paragraph (d)(2)(iv) to read as follows:

§ 1.401(a)(26)–2 Definitions of plan, current benefit structure, and prior benefit structure.

* * * * *

(d) *Current benefit structures*—(2) *Uniform formula.* * * *

(iv) *Cost of living adjustments for former employees.* An ad hoc cost of living adjustment formula benefiting former employees does not fail to be uniform merely because of differences under the formula that reasonably, and on a uniform basis, reflect adjustments for differences in the increases in the cost of living that occurred after such employees retired or commenced receipt of benefits.

* * * * *

Par. 4. Section 1.401(a)(26)–3 as proposed on February 14, 1989 (54 FR 6710), is amended by adding a new paragraph (b)(8) to read as follows:

§ 1.401(a)(26)–3 Employees who benefit under a plan and current benefit structure.

* * * * *

(b) *Benefiting under a current benefit structure.* * * *

(8) *Certain terminating employees*—(i) *General rule.* An employee is treated as an excludable employee for a plan year with respect to a particular plan if—

(A) The employee does not benefit under the plan for the plan year,

(B) The employee is eligible to participate under the plan,

(C) The plan has a minimum period of service requirement or a requirement that the employee be employed on the last day of the plan year (last-day requirement) for an employee to accrue a benefit or receive an allocation for the plan year,

(D) The employee fails to accrue a benefit or receive an allocation under the plan solely because of the failure to satisfy the minimum period of service requirement or the last-day requirement and

(E) The employee terminates employment during the plan year with not more than 500 hours of service and the employee is not an active employee as of the last day of the plan year.

(ii) *Hours of service, etc.* The term "hour of service" has the same meaning as provided for such term by 29 CFR 2530.200b–2 under the general method of crediting service for the employee. If one

of the equivalencies set forth in 29 CFR 2530.200b–3 is used for crediting service under the plan, the 500-hour requirement must be adjusted accordingly.

* * * * *

Par. 5. Section 1.401(a)(26)–8 as proposed on February 14, 1989 (54 FR 6710), is amended by adding new paragraphs (b) (4), (5) and (6) to read as follows:

§ 1.401(a)(26)–8 Effective dates and transition rules.

* * * * *

(b) *Transition rules.* * * *

(4) *Elective deferrals under cash or deferred arrangements.*

Eligibility to make elective contributions under a qualified cash or deferred arrangement (defined under section 401(k)) pursuant to plan provisions as adopted and in effect on or before June 19, 1989, but not after June 19, 1989, may be disregarded for purposes of satisfying the requirements of section 401(a)(26).

(5) *Early retirement "window-period" benefits.* Early retirement benefits available under a plan only to employees who retire within a limited period of time, not to exceed 1 year, are treated as satisfying section 401(a)(26) if such benefits are provided under plan terms that were adopted and in effect on or before April 14, 1989.

(6) *Employees who benefit under the plan.* For the first plan year beginning after December 31, 1988, and before January 1, 1990, any employee who is eligible to participate under the plan and who fails to accrue a benefit solely because of the failure to satisfy either a minimum-period-of-service requirement of 1,000 hours of service or less or a last-day requirement may be treated as benefiting under the plan provided that all such employees are treated as benefiting under the plan.

* * * * *

Par 6. The following new section is added to read as follows:

§ 1.410(b)–0 Table of contents.

This section lists the titles of §§ 1.410(b)–1 through 1.410(b)–10.

§ 1.410(b)–1 Minimum coverage requirements (before 1989).
§ 1.410(b)–2 Minimum coverage requirements (after 1988).
§ 1.410(b)–3 Employees who benefit under a plan.
§ 1.410(b)–4 Nondiscriminatory classification test.
§ 1.410(b)–5 Average benefit percentage test.
§ 1.410(b)–6 Excludable employees.
§ 1.410(b)–7 Definition of plan and rules governing plan disaggregation and aggregation.
§ 1.410(b)–8 Special rules.
§ 1.410(b)–9 Definitions.
§ 1.410(b)–10 Effective dates and transition rules.

Par. 7. Section 1.410(b)–1 is amended by revising the heading and paragraph (a) to read as follows:

§ 1.410(b)–1 Minimum coverage requirements (before 1989).

(a) *In general.* A plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) unless the plan satisfies the requirements of section 410(b)(1). For plan years prior to the applicable effective date set forth in § 1.410(b)–10, a plan satisfies the requirements of section 410(b)(1) if it satisfies the requirements of paragraph (b)(1) or (2) of this section. Also, see § 1.410(b)–2 in the case of plan years beginning on or after the applicable effective date set forth in § 1.410(b)–10.

* * * * *

Par 8. New §§ 1.410(b)–2 through 1.410(b)–10 are added to read as follows:

§ 1.410(b)–2 Minimum coverage requirements (after 1988).

(a) *In general.* A plan is a qualified plan for a plan year only if such plan satisfies section 410(b) for such year. For plan years beginning prior to the applicable effective date set forth in § 1.410(b)–10, a plan satisfies section 410(b) only if it satisfies § 1.410(b)–1 for such year. For plan years beginning on or after the applicable effective date set forth in § 1.410(b)–10, a plan satisfies section 410(b) only if it satisfies paragraph (b) of this section with respect to active employees for such year and paragraph (c) of this section with respect to former employees for such year. The rules in paragraphs (a), (b) and (c) of this section apply to all plans as a condition of qualification, including plans under which no employee is able to accrue any additional benefits (e.g., frozen plans). See section 403(b)(12)(A)(i) with respect to the application of section 410(b) and the regulations thereunder to annuity contracts described in section 403(b). Also, see § 1.410(b)–7 for rules defining "plan" and governing the treatment of separate plans as a single plan for purposes of applying the requirements of section 410(b).

(b) *Requirements with respect to active employees*—(1) *In general.* A plan satisfies this paragraph (b) for a plan year only if it satisfies at least one of the following paragraphs (b)(2) through (b)(6) of this section for such year.

(2) *Ratio percentage test*—(i) *In general.* A plan satisfies this paragraph (b)(2) (ratio percentage test) for a plan year only if the percentage determined by dividing the percentage of the nonhighly compensated active employees who benefit under the plan by the percentage of the highly compensated active employees who benefit under the plan is at least 70 percent. The applicable percentages are determined by dividing the number of active employees benefiting under the plan in such category by the total number of active employees in such category. This test incorporates both the percentage test of section 410(b)(1)(A) and the ratio test of section 410(b)(1)(B).

(ii) *Examples.* The following examples illustrate the application of the ratio percentage test of this paragraph (b)(2):

Example 1. Assume that, for a plan year, Plan A benefits 100 percent of an employer's highly compensated active employees and 70 percent of the employer's nonhighly compensated active employees. The plan's ratio percentage for such year is 70 percent (i.e., 70 percent divided by 100 percent), and thus the plan satisfies the ratio percentage test.

Example 2. Assume that, for a plan year, Plan B benefits 60 percent of the employer's highly compensated active employees and 40 percent of the employer's nonhighly compensated active employees. Plan B fails to satisfy the ratio percentage test because the plan's ratio percentage is only 66⅔ percent (i.e., 40 percent divided by 60 percent).

(3) *Average benefit test.* A plan satisfies this paragraph (b)(3) for a plan year only if the plan satisfies the nondiscriminatory classification test of § 1.410(b)–4 and the average benefit percentage test of § 1.410(b)–5 for such year.

(4) *Certain tax-credit employee stock ownership plans.* A plan satisfies this paragraph (b)(4) for a plan year only if the plan—

(i) Is a tax credit employee stock ownership plan (as defined in section 409),

(ii) Is the only plan of the employer that is intended to qualify under section 401(a) and

(iii) Is a plan that satisfies the rule set forth in section 410(b)(6)(D).

This paragraph (b)(4) is available only for plan years for which the tax credit employee stock ownership plan receives contributions for which the employer is allowed a tax credit under section 41 (as in effect prior to its repeal by the Tax Reform Act of 1986) or section 48(n) (as in effect prior to its amendment by the Tax Reform Act of 1984). The requirement of this paragraph (b)(4) that the plan be the only plan of the employer that is intended to qualify under section 401(a) is not satisfied if the employer has a single plan that is

treated as separate plans pursuant to the requirements of § 1.410(b)–7(c).

(5) *Employers with no highly compensated employees, etc.* A plan satisfies this paragraph (b)(5) for a plan year only if it is maintained by an employer that, at all times during the plan year, either benefits no highly compensated active employees or has no nonhighly compensated active employees.

(6) *Certain governmental or church plans.* A plan satisfies this paragraph (b)(6) for a plan year only if it is described in section 410(c) and such plan satisfies the requirements of section 401(a)(3) as in effect on September 1, 1974. Plans that include annuity contracts described in section 403(b) are not eligible for the rule of this paragraph (b)(6).

(c) *Requirements with respect to former employees*—(1) *Former employees tested separately.* Former employees are generally tested separately for purposes of section 410(b). Thus, former employees are disregarded in applying the ratio percentage test, the nondiscriminatory classification test, and the average benefit percentage test with respect to the coverage of active employees under a plan. During the plan year in which an employee terminates from service with the employer, such employee is treated as an active employee in applying section 410(b) with respect to active employees and is treated as a former employee in applying section 410(b) with respect to former employees. Any accrual or allocation with respect to such employee during such plan year that arises with respect to such employee's status as an active employee is treated as an accrual or allocation of an active employee. Similarly, any accrual or allocation with respect to such employee during such plan year that arises with respect to such employee's status as a former employee is treated as an accrual or allocation of a former employee.

(2) *Application of section 410(b) to former employees*—(i) *In general.* A plan under which no former employee is currently benefiting is deemed to satisfy section 410(b) with respect to its former employees. See § 1.410(b)–3 for the meaning of "benefiting". A plan under which a former employee is currently benefiting (*e.g.*, a plan that is amended to provide an ad hoc cost of living adjustment to the benefit provided a former employee under the plan) must satisfy section 410(b) with respect to its former employees.

(ii) *Testing former employees*—(A) *In general.* A plan satisfies section 410(b) with respect to its former employees if it satisfies one of the tests in paragraphs (b)(2) through (b)(6) of this section with respect to its former employees.

(B) *Special rule.* A plan is deemed to satisfy paragraph (b) of this section with respect to its former employees with a current benefit if at least ten former employees are currently benefiting under the plan and at least 60 percent of the former employees who are currently benefiting under the plan are not highly compensated former employees.

(C) *Former employees tested.* Coverage with respect to former employees is tested separately from coverage with respect to active employees and is tested on the basis of all former employees of the employer. However, at the election of the employer, employees who are not currently benefiting and who became former employees either prior to calendar year 1984 or prior to the beginning of the tenth year before the year being tested may be disregarded.

(D) *Alternative tests.* The Commissioner may, only in revenue rulings, notices or other documents of general applicability, prescribe alternative tests for determining whether or not section 410(b) is satisfied with respect to former employees. Those alternative tests may supplement or modify the tests set forth in this section.

(d) *Certain acquisitions or dispositions.* See section 410(b)(6)(C) (relating to special rules for certain dispositions or acquisitions) for a special rule whereby a plan may be treated as satisfying section 410(b) for a limited period. Section 410(b)(6)(C) does not apply to acquisitions or dispositions that occur prior to the first plan year to which section 410(b) as amended by the Tax Reform Act of 1986 applies. Thus, employers who have a transaction described in section 410(b)(6)(C) that occurs in the year prior to the first plan year in which section 410(b) (as amended by the Tax Reform Act of 1986) first applies must satisfy section 410(b) (without regard to section 410(b)(6)(C)) in the first such plan year.

§ 1.410(b)–3 Employees who benefit under a plan.

(a) *In general.* A plan benefits an active employee only in accordance with the rules of paragraph (b) of this section.

(b) *Active employees*—(1) *In general.* Except as provided in paragraphs (b)(2) and (c) of this section, an active employee is treated as benefiting for a plan year only if for such plan year in the case of a defined contribution plan the employee receives an allocation of contributions or forfeitures and in the case of a defined benefit plan the employee receives a benefit accrual.

(2) *Exceptions to allocation or accrual requirement*—(i) *Special rule for no accruals.* In the case of a defined contribution plan, if for the plan year no employee receives an allocation of contributions or forfeitures, the plan is treated as satisfying section 410(b) for such plan year. Thus, a defined contribution plan for which contributions cease and for which no forfeiture can be allocated satisfies section 410(b). In the case of a defined benefit plan, if for the plan year no employee accrues any additional benefits under the plan, the plan is treated as satisfying section 410(b) for such plan year. The special rule in this paragraph (b)(2) is only available where there are no allocations or benefit accruals for the plan year and thus, it is not available with respect to a top-heavy plan that has accruals required by section 416 or to a plan where future compensation increases are taken into account in determining the accrued benefit under the plan.

(ii) *Plans subject to section 401(k) or section 401(m).* An employee is treated as benefiting under a plan (or the portion thereof) that is subject to section 401(k) or section 401(m) for a plan year if such employee is an eligible employee with respect to such plan (or portion thereof) for such year without regard to whether or not contributions are actually made. For example, an employee is treated as benefiting under the portion of a plan that includes a qualified cash or deferred arrangement if the employee is an eligible employee with respect to such arrangement for the year whether or not the employee actually makes elective contributions under the arrangement for such year. See sections 401(k) and 401(m) and the regulations thereunder.

(iii) *Section 415 limits.* An employee is treated as benefiting under a plan for a plan year if the employee satisfies all of the applicable conditions for accruing a current benefit for such year but fails to accrue a benefit solely because of the section 415 limits on benefits and annual additions.

(iv) *Certain plan limits.* An employee is treated as benefiting under a plan for a plan year if the employee satisfies all of the applicable conditions for accruing the maximum current benefit for such year but fails to accrue a benefit solely because of a uniformly applicable benefit limit under the plan. Thus, for example, if a plan only takes into account the first 30 years of service for accrual purposes, a participant who has completed more than 30 years of service

is still treated as benefiting under the plan.

(v) *Benefit offset arrangements.* An employee is treated as benefiting under a plan for a plan year even if the current benefit accrual is offset by the contributions or benefits under another plan, if all other conditions for the current benefit accrual or allocation are satisfied.

(c) *Certain terminating employees*—(1) *In general.* An employee is treated as an excludable employee for a plan year with respect to a particular plan if—

(i) The employee does not benefit under the plan for the plan year,

(ii) The employee is eligible to participate under the plan,

(iii) The plan has a minimum period of service requirement or a requirement that an employee be employed on the last day of the plan year (last-day requirement) in order for an employee to accrue a benefit or receive an allocation for the plan year,

(iv) The employee fails to accrue a benefit or receive an allocation under the plan solely because of the failure to satisfy the minimum period of service or last-day requirement and

(v) The employee terminates employment during the plan year with not more than 500 hours of service and the employee is not an active employee as of the last day of the plan Year.

(2) *Hours of service, etc.* The term "hours of service" has the same meaning as provided for such term by 29 CFR 2530.200b–2 under the general method of crediting service for the employee. If one of the equivalencies set forth in 29 CFR 2530.200b–3 is used for crediting service under the plan, the 500-hour requirement must be adjusted accordingly.

(d) *Examples.* The following examples illustrate the determination of whether an employee is benefiting under a plan for purposes of section 410(b) and the regulations thereunder.

Example 1. An employer has 35 active employees who are eligible under a defined benefit plan and who are employed on the last day of the plan year. The plan requires 1000 hours of service to accrue a benefit. Only 30 employees satisfy the 1000-hour requirement and accrue a benefit. The five employees who do not satisfy the 1000-hour requirement during the plan year are taken into account in testing the plan under section 410(b) but are treated as not benefiting under the plan.

Example 2. An employer has 35 active employees who are eligible under a defined contribution plan. The plan provides that an employee will not receive an allocation of contributions for a plan year unless the employee is employed by the employer on the last day of the plan year. Only 30 employees are employed by the employer on the last day of the plan year. Two of the five employees who terminated employment before the last day of the plan year had less than 501 hours of service during the plan year, and the remaining three such employees had more than 500 hours of service during such year. Of the five employees who were no longer employed on the last day of the plan year, the two with 500 hours of service or less during the plan year are treated as excludable employees for purposes of section 410(b), and the remaining three who had over 500 hours of service during the plan year but are taken into account in testing the plan under section 410(b) but are treated as not benefiting under the plan.

Example 3. An employer has 30 active employees who are eligible under a defined contribution plan. The plan requires 1000 hours of service to receive an allocation of contributions or forfeitures. Ten employees do not receive an allocation because of their failure to complete 1000 hours of service. Three of the 10 employees who failed to satisfy the minimum service requirement completed less than 501 hours of service and terminated their employment. Two of the employees completed between 501 and 1000 hours of service and terminated their employment. The remaining five employees did not terminate employment. Under the rule in paragraph (c) of this section, the three terminated employees who completed less than 501 hours of service are treated as excludable employees for the portion of the plan year they are employed. The other seven employees who do not receive an allocation are taken into account in testing the plan under section 410(b) but are treated as not benefiting under the plan.

§ 1.410(b)–4 Nondiscriminatory classification test.

(a) *In general.* A plan satisfies the nondiscriminatory classification test of this section for a plan year only if, for such year, the plan provides that employees are eligible to benefit under the plan under a classification set up by the employer in accordance with paragraph (b) of this section and such classification of employees is nondiscriminatory under paragraph (c) of this section. The rules of this section are applied separately to active employees and former employees of the employer.

(b) *Reasonable classification set up by the employer.* A classification is set up by the employer in accordance with this paragraph only if, based on all the facts and circumstances, the classification is reasonable and established under objective business criteria that identify the category of employees who benefit under the plan. Reasonable classifications generally include specified job categories, nature of compensation (i.e., salaried or hourly) and similar bona fide business criteria. An enumeration of employees by name or other specific criteria having substantially the same effect as an enumeration by name is not considered a reasonable classification.

(c) *Nondiscriminatory classification*—(1) *General rule.* A classification is nondiscriminatory under this paragraph (c) for a plan year only if the group of employees included in such classification benefiting under the plan satisfies the requirements of either paragraph (c)(2) or (c)(3) of this section for such plan year.

(2) *Safe harbor.* A plan satisfies the requirement of this paragraph (c)(2) only if the nonhighly compensated employee benefiting percentage equals or exceeds the safe harbor percentage multiplied by the highly compensated employee benefiting percentage.

(3) *Facts and circumstances*—(i) *General rule.* A plan satisfies the requirements of this paragraph (c)(3) only if—

(A) The nonhighly compensated employee benefiting percentage exceeds the unsafe harbor percentage multiplied by the highly compensated employee benefiting percentage and

(B) The classification satisfies paragraph (c)(3)(ii) of this section.

(ii) *Factual determination.* A classification satisfies this paragraph (c)(3)(ii) only if, based on all the relevant facts and circumstances, the Commissioner finds that such classification is nondiscriminatory.

(iii) *Relevant facts and circumstances.* The following facts and circumstances are considered relevant in determining whether a classification is nondiscriminatory. No one particular fact is determinative. Other facts and circumstances may also be considered relevant.

(A) The underlying business reason for the classification. The greater the business reason for the classification the more likely the classification is to be nondiscriminatory. Reducing the employer's cost of providing pension benefits is not a relevant business reason.

(B) The percentage of the employer's employees benefiting under the plan. The higher the percentage, the more likely the classification is to be nondiscriminatory.

(C) Whether or not the number of employees benefiting under the plan in each salary range is representative of the number of employees in each salary range of the employer's work force. The more representative the percentages of employees benefiting under the plan in each salary range are of the percentages of the employer's employees in each salary range, the more likely the classification is to be nondiscriminatory.

(D) The difference between the nonhighly compensated employee benefiting percentage and the safe harbor percentage times the highly compensated employee benefiting percentage. The smaller the difference, the more likely the classification is to be nondiscriminatory.

(4) *Definitions*—(i) *Nonhighly compensated employee benefiting percentage.* The nonhighly compensated employee benefiting percentage is the number of nonhighly compensated employees of the employer benefiting under the plan expressed as a percentage of all nonhighly compensated employees of the employer.

(ii) *Highly compensated employee benefiting percentage.* The highly compensated employee benefiting percentage is the number of highly compensated employees of the employer benefiting under the plan expressed as a percentage of all highly compensated employees of the employer.

(iii) *Safe harbor percentage.* The safe harbor percentage is 50 percent, reduced by ¾ of a percentage point for each percentage point by which the nonhighly compensated employee concentration percentage exceeds 60 percent.

(iv) *Unsafe harbor percentage.* The unsafe harbor percentage is 40 percent, reduced by 3/4 of a percentage point for each percentage point by which the nonhighly compensated employee concentration percentage exceeds 60 percent. However, in no case is the unsafe harbor percentage less than 20 percent.

(v) *Nonhighly compensated employee concentration percentage.* The nonhighly compensated employee concentration percentage is the percentage of all the employees of the employer who are not highly compensated employees. Employees who are excludable employees for purposes of the average benefit test are not taken into account.

(vi) *Table.* The safe harbor and unsafe harbor percentages at each nonhighly compensated employee concentration percentage are set forth below:

Nonhighly compensated employee concentration percentage	Safe harbor percentage	Unsafe harbor percentage
0-60	50	40
61	49.25	39.25
62	48.50	38.50
63	47.75	37.75
64	47	37
65	46.25	36.25
66	45.50	35.50
67	44.75	34.75
68	44	34
69	43.25	33.25
70	42.50	32.50
71	41.75	31.75
72	41	31
73	40.25	30.25
74	39.50	29.50
75	38.75	28.75
76	38	28
77	37.25	27.25
78	36.50	26.50
79	35.75	25.75
80	35	25
81	34.25	24.25
82	33.50	23.50
83	32.75	22.75
84	32	22
85	31.25	21.25
86	30.50	20.50
87	29.75	20
88	29	20
89	28.25	20
90	27.50	20
91	26.75	20
92	26	20
93	25.25	20
94	24.50	20
95	23.75	20
96	23	20
97	22.25	20
98	21.50	20
99	20.75	20

(5) *Examples.* The rules in this paragraph (c) are illustrated by the following examples:

Example 1. Employer A has 200 employees after applying the applicable exclusions in § 1.410(b)–6; 120 are nonhighly compensated employees and 80 are highly compensated employees. The nonhighly compensated employee concentration percentage is 60 percent (120/200). Employer A maintains a plan that benefits 72 highly compensated employees so that the highly compensated employee benefiting percentage is 90 percent (72/80). The safe harbor percentage is 50 percent and the unsafe harbor percentage is 40 percent. If the plan benefits at least 45 percent (50 percent times 90 percent) of the nonhighly compensated employees, or 54 employees, the classification is within the safe harbor and thus is considered nondiscriminatory. If the plan benefits less than 36 percent (40 percent times 90 percent) of the nonhighly compensated employees, or 44 employees, the classification is within the unsafe harbor and thus is considered discriminatory. If the plan benefits from 44 to 53 nonhighly compensated employees, the Commissioner may determine that the classification is nondiscriminatory based on all the facts and circumstances.

Example 2. Employer B has 10,000 employees after applying the applicable exclusions in § 1.410(b)–6; 9600 are nonhighly compensated employees. The nonhighly compensated employee concentration percentage is 96 percent (9600/10,000). Employer B maintains a plan that benefits 100 highly compensated employees so that the highly compensated employee benefiting percentage is 25 percent (100/400). The safe harbor percentage is 23 percent and the unsafe harbor percentage is 20 percent. If the plan benefits at least 5.75 percent (23 percent times 25 percent) of the nonhighly compensated employees, or 552 employees, the classification is within the safe harbor and thus is considered nondiscriminatory. If the plan benefits less than 5 percent (20 percent times 25 percent) of the nonhighly compensated employees, or 480 employees, the classification is within the unsafe harbor and thus is considered discriminatory. If the plan benefits from 480 to 551 nonhighly compensated employees, the Commissioner may determine that the classification is nondiscriminatory based on all the facts and circumstances.

§ 1.410(b)–5 Average benefit percentage test.

(a) *In general.* The average benefit percentage test of this section is satisfied for a plan year only if the average benefit percentage is at least 70 percent.

(b) *Average benefit percentage.* The average benefit percentage is the percentage determined by dividing the actual benefit percentage for the nonhighly compensated active employees by the actual benefit percentage for the highly compensated active employees.

(c) *Actual benefit percentage.* The actual benefit percentage for a group of active employees is the average of the benefit percentages calculated separately with respect to each employee in such group. All active employees of the employer who are not excludable under § 1.410(b)–6 are taken into account for this purpose, even if they are not benefiting under any plan that is taken into account. § 1.410(b)–7 sets forth the rules for determining which qualified plans of the employer are taken into account.

(d) *Calculation of employee benefit percentages.* [Reserved]

§ 1.410(b)–6 Excludable employees.

(a) *Active employees*—(1) *In general.* For purposes of applying section 410(b) and the regulations thereunder with respect to active employees, all active employees of the employer, other than the excludable employees described in paragraphs (b) through (h) of this section, are taken into account.

(2) *Rules of application.* Except as specifically provided otherwise, the rules under this section are to be applied by reference only to the plan or plans being tested under section 410(b) and the regulations thereunder. See § 1.410(b)–7 for rules governing the determination of the plan for purposes of section 410(b) and the regulations thereunder. Thus, in determining whether a particular plan satisfies the ratio percentage test of § 1.410(b)–

2(b)(2), the rules under this section generally are applied on the basis of only such plan. Similarly, in determining whether two or more plans that are treated as a single plan satisfy the ratio percentage test of § 1.410(b)–2(b)(2), paragraphs (b) through (h) of this section generally are applied on the basis of only such deemed single plan. See § 1.410(b)–7(e) for rules governing those plans that are taken into account in applying the average benefit percentage test.

(b) *Minimum age and service exclusions*—(1) *In general.* If a plan applies minimum age and service eligibility conditions permissible under section 410(a)(1) (without regard to subparagraph (B) thereof) and excludes all active employees who do not meet such conditions from benefiting under the plan, then all active employees who fail to satisfy such conditions may be treated as excludable employees with respect to such plan.

(2) *Plans benefiting otherwise excludable employees*—(i) *In general.* Employees who would be excludable under paragraph (b)(1) of this section but for the fact that the plan does not apply the greatest permissible minimum age and service conditions may be treated as excludable employees with respect to the plan. This treatment is available only if the plan satisfies section 410(b) and § 1.410(b)–2 with respect to such otherwise excludable employees in the manner described in paragraph (b)(2)(ii) of this section. In such a case, the plan may be treated as comprising two separate plans, one for the otherwise excludable employees and one for the other employees for purposes of applying section 410(b).

(ii) *Testing otherwise excludable employees.* In determining whether the plan (or portion of a plan that is treated as a separate plan) that benefits active employees who would otherwise be excludable under paragraph (b)(1) of this section satisfies section 410(b) and § 1.410(b)–2, active employees who have satisfied the greatest permissible minimum age and service conditions with respect to the plan are disregarded. In addition, if the plan (or portion thereof) being tested applies minimum age and service conditions and those conditions are less than the maximum permissible minimum age and service conditions, active employees who have not satisfied the lower minimum age and service conditions actually provided for in the plan may be treated as excludable employees. Thus, for example, if the plan requires attainment of age 18 and 3 months of service, employees who have not attained age 18 or 3 months of service with the employer may be excluded.

(3) *Multiple age and service conditions.* If a plan has two or more different sets of minimum age and service eligibility conditions, those employees who fail to satisfy all of the different sets of age and service conditions may be treated as excludable employees. An employee who satisfies any one of the different sets of conditions is not an excludable employee.

(4) *Examples.* The following examples illustrate the application of the minimum age and service condition rules of this paragraph (b):

Example 1. An employer maintains an hourly plan A and a salaried plan B. Plan A has no minimum age or service condition. Plan B has no minimum age condition and requires 1 year of service. The employer treats plans A and B as a single plan for purposes of section 410(b). Because plan A imposes no minimum age or service condition, all employees of the employer can satisfy the minimum age and service conditions of plan A. Therefore, no employees may be treated as excludable employees in testing plans A and B for purposes of section 410(b).

Example 2. An employer maintains three plans. Plan A benefits employees in division A who have satisfied the plan's minimum age and service condition of age 21 and 1 year of service. Plan B benefits employees in division B who have satisfied a minimum age and service condition of age 18 and 1 year of service. Plan C benefits employees in division C who have satisfied a minimum age and service condition of age 21 and 6 months of service. The employer does not comprise separate lines of business under section 414(r). The employer treats plans B and C as a single plan for purposes of section 410(b). In testing plan A under the ratio percentage test or the nondiscriminatory classification test of section 410(b), employees who have failed both to attain age 21 and to have performed at least 1 year of service may be treated as excludable employees. In testing plans B and C, employees who have not satisfied the age and service requirements of either of the two plans may be treated as excludable employees. Thus, an employee may be treated as an excludable employee with respect to plans B and C only if the employee has neither attained age 18 and performed at least 1 year of service, nor attained age 21 and performed at least 6 months of service. Thus, an active employee who is 19 years old and has performed 11 months of service can be treated as an excludable employee. Similarly, an employee who is 17 years old and has performed 2 years of service can be treated as an excludable employee.

Example 3. An employer maintains three plans. Plan A benefits all employees in division A (the plan does not apply any minimum age or service condition). Plan B benefits employees in division B who have satisfied a minimum age and service condition of age 18 and 1 year of service. Plan C benefits employees in division C who have satisfied a minimum age and service condition of age 21 and 6 months of service. The employer does not comprise separate lines of business under section 414(r). In testing the employer's plans under the average benefit percentage test provided in § 1.410(b)–5, plans A, B and C are treated as a single plan. Therefore, because plan A does not apply any minimum age or service condition, no active employee may be treated as an excludable employee.

Example 4. An employer maintains Plan A. Plan A benefits all employees in division A (the plan does not apply any minimum age or service conditions). The employer has 110 employees who either have not completed 1 year of service or have not attained age 21. Of these 110 employees, 10 are highly compensated employees and 100 are nonhighly compensated employees. Plan A benefits 5 of these highly compensated employees, or 50 percent of these highly compensated employees. Plan A benefits 35 of these nonhighly compensated employees, or 35 percent of these nonhighly compensated employees. Plan A satisfies the ratio percentage test of section 410(b) with respect to employees who do not satisfy the greatest permissible minimum age and service requirement (the ratio of nonhighly compensated employees benefiting under the plan (35 percent) is equal to 70 percent of the ratio of the highly compensated employees benefiting under the plan (50 percent)). Thus, in determining whether or not Plan A satisfies section 410(b), the 110 employees may be treated as excludable employees in accordance with paragraph (b)(2) of this section.

(c) *Certain nonresident aliens.* An employee who is a nonresident alien and who receives no earned income (within the meaning of section 911(d)(2)) from the employer that constitutes income from sources within the United States (within the meaning of section 861(a)(3)) is to be treated as an excludable employee. This paragraph (c) applies even if such nonresident alien benefits under the plan.

(d) *Certain employees covered pursuant to a collective bargaining agreement.* An employee who is included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between employee representatives and such employer or employers, is treated as an excludable employee with respect to the portion of a plan that does not benefit any employee who is included in such a collective bargaining unit of employees. This paragraph (d) applies without regard to whether the employee included in the collective bargaining unit actually benefits under any other plan of

the employer. See section 7701(a)(46) and § 301.7701–17T (Temporary) for additional requirements applicable to the collective bargaining agreement. If more than 2 percent of the employees covered under a collective bargaining agreement are professional employees, the employees covered under such agreement are not treated as covered by a collective bargaining agreement. Special rules are set forth in § 1.410(b)–7, providing that the portion of a plan that benefits employees under a collective bargaining unit is treated as a separate plan from the portion that benefits non-collective bargaining unit employees and from the portion that benefits employees under a different collective bargaining agreement.

(e) *Collectively bargained plans*—(1) *In general.* This paragraph (e) provides rules with respect to a plan described in section 413(a), relating to collectively bargained plans. Section 413(b)(1) provides that section 410(b) is applied to a section 413(a) plan as if all employees of each of the employers who are parties to the collective bargaining agreement and who are subject to the same benefit computation formula were employed by a single employer. Consequently, such a plan satisfies section 410(b) with respect to such employees because all other employees are excludable employees and are therefore disregarded.

(2) *Covered by a collective bargaining agreement.* An employee is covered by a collective bargaining agreement only if such employee is represented by a bona fide employee representative that is a party to the collective bargaining agreement under which the plan is maintained. Thus, for example, an employee of either the plan or the employee representative is not included in a unit of employees covered pursuant to the collective bargaining agreement under which the plan is maintained merely because the employee is covered under the plan pursuant to an agreement entered into by the plan or employee representative on behalf of the employee (other than in the capacity of an employee representative with respect to such employee). This is the case even if all of such employees benefiting under the plan constitute only a de minimis percentage of the total employees benefiting under the plan.

(3) *Plans covering professional employees*—(i) *In general.* An employee is not considered covered by a collective bargaining agreement for a plan year if, for such year, more than 2 percent of the employees who are covered pursuant to such agreement are professionals. This rule applies to all employees under the agreement, nonprofessionals as well as professionals. See § 1.410(b)–9(g) for the definition of "professional". Thus, such employees are not excludable employees with respect to employees who are not covered by a collective bargaining agreement.

(ii) *Multiple collective bargaining agreements.* This paragraph (e)(3) is applied separately with respect to each collective bargaining agreement. Thus, for example, if a plan benefits two groups of employees, one covered by collective bargaining agreement X, more than 2 percent of whom are professionals, and another covered by collective bargaining agreement Y, none of whom are professionals, the group covered by agreement X are not considered covered by a collective bargaining agreement and the group covered by agreement Y are considered covered by a collective bargaining agreement.

(iii) *Application of minimum coverage tests.* A plan that covers professional employees must satisfy section 410(b) without regard to section 413(b) and the special rule in paragraph (e)(1) of this section. In such cases, all nonexcludable employees must be taken into account. For this purpose, employees included in other collective bargaining units are excludable employees. However, the employees who are not covered by a collective bargaining agreement and the employees who are covered by such an agreement that has more than 2 percent professionals are not excludable employees.

(f) *Examples.* The following examples illustrate the application of the collective bargaining unit rules of this section.

Example 1. An employer has 700 employees (none of whom is a professional employee) who are included in a unit of employees covered by a collective bargaining agreement and 300 employees (200 of whom are highly compensated employees) who are not included in the collective bargaining unit of employees. For purposes of applying the ratio percentage test of § 1.410(b)–2 to plan X, which benefits only the 300 employees who are not included in the collective bargaining unit, the 700 employees included in the collective bargaining unit are treated as excludable employees pursuant to paragraph (d) of this section.

Example 2. (i) An employer has 1500 employees who fall into the following categories:

	Non-bargaining unit	Bargaining unit	Total
HCE	100	100	200
NHCE	900	400	1,300
Total	1,000	500	1,500

The employer maintains plan Y, which benefits 1100 employees, including all of the non-bargaining unit employees except for 100 of the nonhighly compensated employees, and 200 of the collective bargaining unit employees including the 100 highly compensated bargaining unit employees. There are no professional employees covered by the collective bargaining agreement. In accordance with § 1.410(b)–7(c), the employer must apply the ratio percentage test of § 1.410(b)–2 to plan Y as if such plan were two separate plans, one benefiting the non-collective bargaining unit employees and the other benefiting the collective bargaining unit employees.

(ii) In testing the portion of plan Y that does not benefit any collective bargaining unit employee, the collective bargaining unit employees are excludable employees. Such portion satisfies the ratio percentage test because it benefits 100 percent of the highly compensated employees (100 of 100) and 88.9 percent of the nonhighly compensated employees (800 of 900 noncollective bargaining unit nonhighly compensated employees).

(iii) In testing the portion of plan Y that benefits collective bargaining unit employees, only those 200 collective bargaining unit employees benefiting under the plan are taken into account. Therefore, the 1000 non-bargaining unit employees and the 300 bargaining unit employees not benefiting under the plan are treated as excludable employees. This portion of plan Y also satisfies the ratio percentage test because it is treated as benefiting 100 percent of the highly compensated employees (100 out of 100 highly compensated employees) and 100 percent of the nonhighly compensated employees (100 out of 100 of nonhighly compensated employees). Section 410(b) is satisfied in all cases whatever the composition of highly and nonhighly compensated employees benefiting under the plan because of the special rule under paragraph (e)(1) of this section.

Example 3. An employer has 1100 employees who fall into the following categories:

	Non-bargaining unit	Bargaining unit	Total
HCE	100	80	180
NHCE	900	20	920
Total	1,000	100	1,100

The employer maintains plan Z, which benefits all of the bargaining unit employees. More than 2 percent of the bargaining unit employees are professional employees. Therefore, plan Z cannot be tested under the coverage rules in section 413(b). None of the employees in the bargaining unit including both the nonprofessional and professional employees may be treated as excludable employees under the rules in paragraph (e) because they are treated as not covered by a collective bargaining agreement. Therefore, in testing plan Z, all employees are taken into account. Plan Z fails to satisfy the ratio

percentage test, because it benefits 44.44 percent of the highly compensated employees (80/180) and 2.17 percent of the nonhighly compensated employees (20/920) for a ratio of 4.895 percent.

(g) *Employees of separate lines of business.* In the case of an employer that comprises two or more separate lines of business under section 414(r) that are recognized for purposes of section 410(b), in testing a plan that benefits the employees of one of such separate lines of business, the employees of the other separate lines of business are to be treated as excludable employees. The rule in this paragraph (g) is not applicable for purposes of applying the nondiscriminatory classification requirement of section 410(b)(5)(B).

(h) *Certain terminating employees.* See § 1.410(b)–3(d) for rules under which certain terminating employees are treated as excludable employees with respect to a particular plan.

(i) *Excludable former employees.* An active employee who is an excludable employee under tho rules of paragraph (b), (c), (d), (e), (g) or (h) of this section at the time of termination of employment is an excludable former employee after such termination.

§ 1.410(b)–7 Definition of plan and rules governing plan disaggregation and aggregation.

(a) *In general.* In general, the term "plan" refers to a plan described in section 401(a) that includes one or more trusts intended to be exempt from tax under section 501(a) and to an annuity plan described in section 403(a). As described in paragraph (b) of this section, each single plan under section 414(l) is to be treated as a single plan for purposes of section 410(b) and the regulations thereunder. Furthermore, as described in paragraph (c) of this section, certain single plans must be treated as comprising separate plans, each of which is a single plan subject to section 410(b) and the regulations thereunder. Under paragraph (d) of this section, for purposes of the ratio percentage test of § 1.410(b)–2 and the nondiscriminatory classification test of § 1.410(b)–4, an employer may elect to aggregate certain separate plans to form a single plan. Finally, under paragraph (e) of this section, in applying the average benefit percentage test of § 1.410(b)–5, certain separate plans must be aggregated to form a single plan.

(b) *Separate asset pools are separate plans.* Each single plan within the meaning of section 414(l) is a separate plan for purposes of section 410(b). See § 1.414(l)–1(b). For example, if only a portion of the assets under a defined benefit plan is available, on an ongoing basis, to provide the benefits of certain employees and the remaining assets are available only in certain limited cases to provide such benefits (but are available in all cases for the benefit of other employees), there are two separate plans. A single plan under section 414(l) is a single plan for purposes of section 410(b) notwithstanding that such plan comprises separate written documents and separate trusts, each of which have received separate determination letters from the Internal Revenue Service. A defined contribution plan does not comprise separate plans merely because it includes more than one trust or it provides for separate accounts and permits employees to direct the investment of the amounts allocated to their accounts. Further, a plan does not comprise separate plans merely because assets are separately invested in individual insurance or annuity contracts for employees.

(c) *Mandatory disaggregation of certain plans*—(1) *Plans benefiting collective bargaining unit employees.* A plan that benefits employees who are included in a unit of employees covered by a collective bargaining agreement and employees who are not included in such a collective bargaining unit is treated as comprising separate plans for purposes of applying section 410(b) and the regulations thereunder. This paragraph (c)(1) is applied separately with respect to each collective bargaining unit. Thus, for example, if a plan benefits employees in three categories—employees included in collective bargaining unit A, employees included in collective bargaining unit B, and employees who are not included in any collective bargaining unit—such plan is treated as comprising three separate plans, each of which benefits only one category of employees and each of which must satisfy the requirements of section 410(b) and the regulations thereunder. Similarly, if a plan benefits only employees who are included in collective bargaining unit A and collective bargaining unit B, such plan is treated as comprising two separate plans.

(2) *ESOPs and non-ESOPs.* The portion of a plan that is an employee stock ownership plan described in section 4975(e)(7) or section 409 (an ESOP) and the portion of such plan that is not an ESOP are treated as separate plans for purposes of section 410(b). Notwithstanding § 1.410(b)–10, an employer may treat the rule in this paragraph (c)(2) as not effective for plan years beginning before January 1, 1990.

(3) *Qualified cash or deferred arrangements and matching contributions.* The portion of a plan that consists of contributions under a qualified cash or deferred arrangement (section 401(k)) and the portion of a plan that does not consist of such contributions are treated as separate plans for purposes of section 410(b) and the regulations thereunder. Similarly, the portion of a plan that consists of matching contributions and employee contributions (section 401(m)) and the portion of a plan that does not consist of such contributions are treated as separate plans for purposes of section 410(b) and the regulations thereunder. Thus, for example, a plan that includes contributions under a qualified cash or deferred arrangement under section 401(k), matching contributions and employee contributions under section 401(m) and other contributions is treated as three separate plans for purposes of section 410(b) and the regulations thereunder.

(4) *Plans benefiting otherwise excludable employees.* If an employer elects to apply section 410(b) separately to the portion of a plan that benefits only employees who satisfy age and service conditions that are lower than the greatest minimum age and service conditions permissible under section 410(a), such plan is treated as comprising separate plans, one benefiting the employees who have satisfied such lower minimum age and service conditions but not the greatest minimum age and service conditions permissible under section 410(a) and one benefiting employees who have satisfied the greatest minimum age and service conditions permissible under section 410(a).

(5) *Plans of separate lines of business.* If an employer is treated as operating two or more separate lines of business under section 414(r), the employer elects to apply section 410(b) separately to such businesses and section 410(b)(5) is satisfied, a plan that benefits the employees of a separate line of business is treated as a separate plan from any plan that is maintained by any other line of business.

(6) *Plans maintained by more than one employer*—(i) *Multiple employer plans.* If a plan benefits employees of more than one employer and such employees are not included in a unit of employees covered by a collective bargaining agreement (a multiple employer plan), the plan is treated as comprising separate plans each of which is maintained by a separate employer and must satisfy section 410(b) by reference only to such employer's employees.

(ii) *Multiemployer plans.* The portion of a plan that benefits employees who

are included in a collective bargaining unit, the portion of such plan that benefits employees who are included in another collective bargaining unit and the portion of such plan that benefits non-collective bargaining unit employees are all treated as separate plans for purposes of section 410(b). Consistent with section 413(b), the portion of the plan that is maintained pursuant to a collective bargaining agreement is treated as a single plan maintained by a single employer that employs all the employees benefiting under the same benefit computation formula and covered pursuant to that collective bargaining agreement. The non-collectively bargained portion of the plan is treated as maintained by one or more employers, depending on whether the non-collective bargaining unit employees who benefit under the plan are employed by one or more employers.

(d) *Permissive aggregation for ratio percentage and nondiscriminatory classification tests*—(1) *In general.* For purposes of applying the ratio percentage and nondiscriminatory classification tests of § 1.410(b)–2, except as provided in paragraphs (d)(2) and (d)(3) of this section, an employer may elect to designate two or more separate plans (determined after application of paragraph (b) of this section) of such employer as a single plan. If an employer elects to treat two or more of its separate plans as a single plan under this paragraph, such plans must be treated as a single plan for all purposes under sections 401(a)(4) and 410(b).

(2) *Rules of disaggregation apply.* An employer cannot elect to aggregate two or more plans that are mandatorily disaggregated under the rules in paragraph (c) of this section. Thus, for example, a plan that benefits both collective bargaining unit employees and non-collective bargaining unit employees that must be disaggregated because of the rules in paragraph (c)(1) of this section may not be permissively aggregated.

(3) *Duplicative aggregation.* A plan cannot be combined with two or more plans to form more than one single plan. Thus, for example, an employer that maintains plans A, B and C cannot aggregate plans A and B and plans A and C to form two single plans. However, such employer may, for example, aggregate plans A, B and C, to form plan ABC, plans AB and C, plans AC and B, or plans A and BC.

(e) *Mandatory aggregation for average benefit percentage test*—(1) *In general.* In determining whether a plan satisfies § 1.410(b)–2(b)(3), it is necessary to determine whether the average benefit percentage test of § 1.410(b)–5 is satisfied. For purposes of applying the average benefit percentage test, except as provided in paragraph (e)(2) of this section, all qualified plans of the employer must be taken into account to form a single plan, including contributions and/or benefits under qualified cash or deferred arrangements (section 401(k)) and matching contributions and employee contributions (section 401(m)).

(2) *Rules of disaggregation apply.* Plans that are mandatorily disaggregated under the rules in paragraph (c)(1), (2), (3), (5) or (6) of this section must separately satisfy the average benefit percentage test of § 1.410(b)–5.

(f) *Section 403(b) annuities.* In determining whether a plan satisfies section 410(b), a plan funded by annuity contracts described in section 403(b) is disregarded. However, in determining whether a plan funded by annuity contracts under section 403(b) satisfies section 410(b) (by reason of section 403(b)(12)(A)(i)), plans that are not funded by annuity contracts described in section 403(b) may be taken into account. See section 403(b)(12)(A)(i) and the regulations thereunder with respect to the application of this section to plans funded by annuity contracts described in section 403(b).

§ 1.410(b)–8 Special rules.

(a) *Determination with respect to an applicable year*—(1) *General rule.* A plan satisfies the requirements of section 410(b) and the regulations thereunder if it meets at least one of the tests set forth in § 1.410(b)–2(b)(2) through (6) on each day of the year being tested. For purposes of this section, a plan will be deemed to satisfy the relevant test if the plan satisfies such test on at least one day in each quarter of the year being tested. If the plan's eligibility rules or benefit formula operates to cause the four quarterly testing days to not reasonably represent the coverage of the plan over the entire plan year, the test must be satisfied on each day of the plan year. A plan is deemed to satisfy the average benefit percentage test of § 1.410(b)–5 if the plan satisfies such test on an annual basis. For purposes of this test, all employees employed by the employer during the year being tested are taken into account.

(2) *Retroactive correction.* If a plan fails to satisfy section 410(b) for one or more days during a plan year, such plan may be amended by the last day of such plan year to satisfy section 410(b) retroactively, based on the facts as they existed on the day or days of failure, by expanding coverage or by improving benefits or contributions or by modifying eligibility conditions under the plan. The need to retroactively amend to satisfy section 410(b) does not constitute a basis for eliminating or reducing a benefit in violation of section 411(d)(6).

(b) *Year for purposes of testing minimum coverage*—(1) *In general.* In general, the applicable year for purposes of determining whether a plan meets the minimum coverage requirements of section 410(b) and the regulations thereunder is the plan year of the plan being tested.

(2) *Plan year.* For purposes of section 410(b) and the regulations thereunder, the plan year is the plan year of the qualified plan as defined in the written plan document. In the absence of a specifically designated plan year, the plan year will be deemed to be the calendar year.

(3) *Aggregation of two or more plans.* If, in accordance with § 1.410(b)–7(d), two or more plans are treated as a single plan for purposes of section 410(b) and the regulations thereunder, such otherwise separate plans cannot have different plan years. Notwithstanding the provisions of § 1.410(b)–10, the employer may treat the rule in this paragraph (b)(3) as not effective for plan years beginning before January 1, 1990.

(4) *Average benefit percentage test.* The determination of whether the average benefit percentage test in § 1.410(b)–5 is satisfied is made on the basis of plan years ending with or within the same calendar year.

(c) *Family member aggregation rule.* For purposes of section 410(b) and the regulations thereunder, in accordance with section 414(q)(6), a highly compensated employee who is a 5-percent owner or one of the 10 most highly compensated employees and any family member or members of such highly compensated employee who is also an employee of the employer are to be treated as a single highly compensated employee. If any member of such group is benefiting under a plan, the deemed single employee is treated as benefiting under the plan. If no member of such group is benefiting under a plan, the deemed single employee is treated as not benefiting under the plan.

§ 1.410(b)–9 Definitions.

(a) *Employee*—(1) *In general.* The term "employee" means an individual who performs services for the employer who is either a common law employee of the employer, a self-employed individual who is treated as an employee pursuant to section 401(c)(1),

or a leased employee who is treated as an employee of the employer-recipient pursuant to the provisions of section 414(n)(2) or section 414(o)(2), other than individuals who are excluded by reason of section 414(n)(5). Individuals that an employer treats as employees under section 414(n), pursuant to the requirements of section 414(o), are considered to be leased employees for purposes of this rule.

(2) *Active and former employees.* An active employee is an individual currently performing services as an employee of the employer. An individual ceases to be an active employee and is treated as a former employee commencing with the day after the day on which the employee ceases performing services for the employer. Thus, an employee who ceases performing services for an employer during a plan year is both an active employee and a former employee for such plan year.

(3) *Highly compensated employee.* The term "highly compensated employee" means a highly compensated employee within the meaning of section 414(q) and the regulations thereunder.

(4) *Nonhighly compensated employee.* The term "nonhighly compensated employee" means an employee who is not a highly compensated employee.

(b) *Employer*—(1) *In general.* For purposes of section 410(b) and the regulations thereunder, except as specifically provided otherwise, the term "employer" means the employer maintaining the plan and those employers required to be aggregated with such employer under sections 414 (b), (c), (m) or (o). An individual who owns the entire interest of an unincorporated trade or business is treated as an employer. Also, a partnership is treated as the employer of each partner and each employee of the partnership.

(2) *Separate lines of business.* In accordance with the rules of section 414(r), each separate line of business of an employer (determined after application of paragraph (b)(1) of this section) may be treated as a separate employer.

(c) *Compensation.* The term "compensation" means compensation within the meaning of section 414(s) and the regulations thereunder. The applicable year under section 414(s) for purposes of applying section 410(b) and the regulations thereunder is the plan year for which a determination is being made. See section 401(a)(17) for certain limitations on the amount of compensation that may be taken into account with respect to any employee for a plan year.

(d) *Defined contribution plan.* The term "defined contribution plan" means a defined contribution plan within the meaning of section 414(i). Also, for purposes of section 410(b), a plan described in section 414(k) is treated as a defined contribution plan.

(e) Defined benefit plan. The term "defined benefit plan" means a defined benefit plan within the meaning of section 414(j). However, for purposes of section 410(b), a plan described in section 414(k) is treated as a defined contribution plan.

(f) *Multiemployer plan.* A multiemployer plan is a multiemployer plan within the meaning of section 414(f).

(g) *Professional.* The term "professional" means any individual who, on any day of the plan year, performs professional services for the employer as a certified or other public accountant, actuary, architect, attorney, chiropodist, chiropractor, executive, investment banker, medical doctor, dentist, optometrist, osteopath, podiatrist, engineer, psychologist, stockbroker, veterinarian or in such other professional capacity determined by the Commissioner in a notice or other document of general applicability to constitute the performance of services as a professional.

§ 1.410(b)–10 Effective dates and transition rules.

(a) *General rule.* The minimum coverage rules of section 410(b), as amended by section 1112 of the Tax Reform Act of 1986, and the provisions of § 1.410(b)–2 through –9 apply to plan years beginning on or after January 1, 1989.

(b) *Transition rules*—(1) *Average benefit test.* Notwithstanding paragraph (a) of this section, in applying the average benefit test for any plan year beginning after December 31, 1988, and before January 1, 1990 ("1989 plan year"), whether or not a plan's classification is nondiscriminatory may be determined either by applying the rules in § 1.410(b)–4 or solely on the basis of facts and circumstances, at the employer's election. The plan must satisfy the average benefit percentage test for the 1989 plan year. If a plan's classification has been determined by the Commissioner to be nondiscriminatory and there have been no significant changes or omissions in a material fact, the classification will be treated as nondiscriminatory for the 1989 plan year.

(2) *Employees who benefit under a plan.* Notwithstanding paragraph (a) of this section, for the first plan year beginning after December 31, 1988, and before January 1, 1990, any employee who is eligible to participate under the plan and who fails to accrue a benefit solely because of the failure to satisfy either a minimum-period-of-service requirement of 1000 hours of service or less or a last-day requirement may be treated as benefiting under the plan, provided that all such employees are treated as benefiting under the plan.

(c) *Exception for certain collective bargaining unit plans*—(1) *In general.* In the case of a collective bargaining unit plan, the minimum coverage rules of section 410(b), as amended by section 1112 of the Tax Reform Act of 1986, and the provisions of § 1.410(b)–2 through –9 shall not apply to plan years beginning before the earlier of—

(i) The later of (A) January 1, 1989, or (B) the date on which the last of the collective bargaining agreements applicable to such plan terminates (determined without regard to any extension thereof after February 28, 1986) or

(ii) January 1, 1991.

For purposes of this paragraph, any extension or renegotiation of a collective bargaining agreement that is ratified after February 28, 1986, is to be disregarded in determining the date on which such agreement terminates.

(2) *Example.* The rules in this paragraph (c) are illustrated by the following example:

Example. Employer A maintains a collective bargaining unit plan, Plan 1, that covers 100 of A's nonunion employees and 900 of A's union employees. Employer A also maintains Plan 2 that covers A's other 400 nonunion employees. The agreement under which Plan 1 is maintained was entered into on January 1, 1986, and expires December 31, 1992. Because Plan 1 is a collective bargaining unit plan, section 410(b) applies to the first plan year beginning on or after January 1, 1991. In applying section 410(b) to Plan 2, the 100 nonunion employees in Plan 1 must be taken into account. The deferred effective date for collectively bargained plans is not applicable in determining how section 410(b) is applied to a non-collectively bargained plan.

(3) *Collective bargaining unit plan.* For purposes of this paragraph (c), a plan is a collective bargaining unit plan if it is a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers, where one or more of such agreements were ratified before March 1, 1986. Only plans maintained pursuant to agreements that the Secretary of Labor finds to be collective bargaining agreements and that satisfy the requirements of section 7701(a)(46) and the regulations thereunder are eligible

for the deferred effective date under this paragraph (c). A plan shall not be treated as a collective bargaining unit plan eligible for the deferred effective date under this paragraph (c) unless the plan would be a plan maintained pursuant to a collective bargaining agreement under the principles applied under section 1017(c) of the Employee Retirement Income Security Act of 1974. See H.R. Rep. No. 1280, 93rd Cong. 2d Sess. 266 (1974).

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89-11613 Filed 5-17-89; 8:45 am]

BILLING CODE 4830-01-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Parts 301 and 309

[CRT Docket No. 89-3-RM]

Satellite Carrier Compulsory License Rules

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Tribunal is proposing to amend its rules to provide for the filing of satellite carrier claims with the Tribunal and to establish the rules of procedure for distributing the satellite carrier copyright royalty fees to the proper copyright owners. These regulations implement the provisions of the Satellite Home Viewer Act of 1988.

DATE: An original and five copies of all comments shall be filed by June 19, 1989.

ADDRESS: Comments should be addressed to: Chairman, Copyright Royalty Tribunal, 1111 20th Street, Suite 450, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036. Telephone: (202) 653-5175.

SUPPLEMENTARY INFORMATION: The Satellite Home Viewer Act of 1988, effective January 1, 1989, created a new copyright compulsory license. In general, it provides that a satellite carrier may retransmit broadcast signals to the public for private home viewing so long as the satellite carrier pays a statutorily-set copyright royalty fee. The fees are to be paid by the satellite carrier to the Copyright Office semiannually. 17 U.S.C. 119(b)(1).

Each July, copyright owners who believe that they are entitled to some portion of the satellite carrier copyright royalties may file claims with the Copyright Royalty Tribunal. The Tribunal will then ascertain whether any controversies exist concerning the proper distribution of the royalties to the copyright owners. If any controversies exist, the Tribunal will hold a proceeding to determine the proper distribution. 17 U.S.C. 119(b)(4).

To implement the Satellite Home Viewer Act, it is necessary for the Tribunal to amend some of its existing regulations, and to adopt new regulations. The first calendar year fund under the Act will be for 1989. Accordingly, the first claims to be filed for satellite carrier royalties will take place during July, 1990. The first distribution proceeding will occur some time after August 1, 1990.

Because the procedures to be followed for the satellite carrier compulsory license are similar to the distribution procedures for the cable and jukebox compulsory licenses, the changes that are required to be made to the Tribunal's regulations are not substantial. One rule proposal the Tribunal wishes all potential claimants to note is that if a claimant has both a cable and a satellite carrier claim to file during July, the Tribunal will not permit the claimant to file a single claim. Separate claims will be required to be filed to avoid confusion.

List of Subjects

37 CFR Part 301

Administrative practice and procedure, Freedom of information, Sunshine Act.

37 CFR Part 309

Claims, Copyright, Satellites.

For the reasons set forth in the preamble, the Tribunal proposes to amend 37 CFR Part 301 as follows:

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

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

Authority: 17 U.S.C. 803(a).

2. In § 301.1, paragraph (d) is proposed to be revised, and a new paragraph (e) is proposed to be added as follows:

§ 301.1 Purpose.

* * * * *

(d) To distribute cable television, jukebox and satellite carrier royalties under 17 U.S.C. 111, 116 and 119, respectively, deposited with the Register of Copyrights.

(e) To monitor and assist the negotiation of an adjustment to the satellite carrier royalty rates, and/or to assist and review the arbitration of an adjustment to the satellite carrier royalty rates (17 U.S.C. 119).

3. Section 301.70 is proposed to be revised as follows:

§ 301.70 Scope.

This subpart governs only those proceedings dealing with the distribution of compulsory cable television, coin-operated phonorecord player (jukebox) and satellite carrier royalties deposited with the Register of Copyrights, according to the terms of 17 U.S.C.(d)(4), 116(c) and 119(b), respectively. It does not govern unrelated rulemaking proceedings. Those provisions of Subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

4. In § 301.71, a new paragraph (c) is proposed to be added as follows:

§ 301.71 Commencement proceedings.

* * * * *

(c) *Satellite carriers.* In the case of compulsory royalty fees for the secondary transmission by satellite carriers of television broadcast stations to the public for private home viewing, any person claiming to be entitled to such fees must file a claim with the Tribunal during the month of July each year in accordance with Tribunal regulations.

5. In § 301.72, a new paragraph (c) is proposed to be added as follows:

§ 301.72 Determination of controversy.

* * * * *

(c) *Satellite carriers.* After the first day of August each year, the Tribunal shall determine whether a controversy exists among the claimants of satellite carrier compulsory royalty fees. In order to determine whether a controversy exists, the Tribunal may conduct whatever proceedings it feels necessary, subject to the procedures and regulations of Subpart E. The results of this determination shall be announced in the **Federal Register.** If the Tribunal decides that a controversy exists, the **Federal Register** notice shall also announce the commencement of the royalty distribution proceeding, and shall, to the extent feasible, describe the general structure and schedule of the proceeding.

6. A new Part 309, consisting of Sections 309.1 through 309.6 is proposed to be added as follows:

PART 309—FILING OF CLAIMS TO SATELLITE CARRIER ROYALTY FEES

Sec.

309.1 General.

309.2 Time of filing.

Sec.
309.3 Content of claim.
309.4 Compliance with statutory date.
309.5 Separate claims required.
309.6 Forms.

Authority: 17 U.S.C. 119(b)(4).

§ 309.1 General.

This regulation prescribes procedures pursuant to 17 U.S.C. 119(b)(4), whereby persons claiming to be entitled to compulsory license fees for secondary transmissions by satellite carriers of television broadcast signals to the public for private home viewing shall file claims with the Copyright Royalty Tribunal.

§ 309.2 Time of filing.

Commencing with July, 1990, and during July of each succeeding year, every person claiming to be entitled to compulsory license fees for secondary transmissions by satellite carriers of television broadcast signals to the public for private home viewing shall file a claim with the Copyright Royalty Tribunal. No royalty fees shall be distributed to any person during the specified period unless such person has filed a claim to such fees during the following calendar month of July. Claimants may file jointly or as a single claim. A performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliate agreements, for purposes of this filing and fee distribution.

§ 309.3 Content of Claims.

Claims filed for satellite carrier compulsory license fees shall include the following information:

(a) The full legal name of the person or entity claiming compulsory license fees;

(b) The full address, including a specific number and street name or rural route, of the place of business of the person or entity;

(c) A general statement of the nature of the copyrighted works whose secondary transmission provides the basis of the claim; and

(d) Identification of at least one secondary transmission establishing a basis for the claim.

§ 309.4 Compliance with statutory dates.

Claims filed with the Copyright Royalty Tribunal shall be considered timely filed only if:

(a) They are received in the offices of the Copyright Royalty Tribunal during normal business hours during the month of July, or

(b) They are properly addressed to the Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

§ 309.5 Separate claims required.

If a person or entity intends to file claims for both cable compulsory license fees and satellite carrier compulsory license fees during the same month of July, that person or entity must file his or her claims separately with the Copyright Royalty Tribunal. Any single claim which purports to file for both cable and satellite carrier compulsory license fees will be rejected.

§ 309.6 Forms.

The Copyright Royalty Tribunal does not provide printed forms for the filing of claims.

Dated: May 12, 1989.

Mario F. Aguer,

Acting Chairman.

[FR Doc. 89-11848 Filed 5-17-89; 8:45 am]

BILLING CODE 1410-09-M

Notices

Federal Register
Vol. 54, No. 95
Thursday, May 18, 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

Forms Under Review by Office of Management and Budget

May 12, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if appliable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

• Forest Service

Supplemental Qualifications Statement—Forestry Aid/Technician Position, GS–2–7 FS 6100–7.

On occasion.

Individuals or households; 3,000 responses; 3,000 hours; not applicable under 3504(h).

Penny L. McGill (703) 235–2046.

Extension

• Agricultural Stabilization and Conservation Service.

Standards for Approval of Warehouses for Cotton and Cotton Linters CCC–823, CCC–823–1A, and CCC–823–IT, CCC–20, CCC–49.

On occasion.

Businesses or other for-profit; Small businesses or organizations; 1,235 responses; 1,245 hours; not applicable under 3504(h).

Shirlene Engle (202) 447–7397.

• Agricultural Marketing Service.

Export Fruit Acts.

None.

Recordkeeping; On occasion.

Farms; Businesses or other for-profit; Small businesses or organization; 291 responses; 2846 hours; not applicable under 3504(h).

Virginia Olsen (202) 475–3930.

New Collection

• Agricultural Marketing Service

Proposed Marketing Order for Seedless European Cucumbers.

None.

Annually.

Farms; Businesses or other for-profit; Small businesses or organizations; 457 responses; 60 hours; not applicable under 3405(h).

Virginia M. Olsen (202) 475–3930.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 89–11689 Filed 5–17–89; 8:45 am]

BILLING CODE 3410–01–M

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of country of origin adjustment for certain condensed milk from Denmark.

SUMMARY: This notice adjusts the country of origin for the quota quantity of condensed milk in airtight containers assigned to Denmark.

EFFECTIVE DATE: May 22, 1989.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616 South Building, Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 447–5270.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "nonmajor" since it will not have any of the significant effects specified in those documents. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota article specified herein may be entered does not affect the ability of importers to import this quota article, but only expands the number of countries from which the article may be imported. Also, since this action is being taken in recognition of changes in the market which have already occurred, this action will not cause any new economic impact.

Subchapter IV of Chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) sets forth import limitations imposed on certain dairy products, including certain condensed milk. Note 3(a)(iii) of Subchapter IV of Chapter 99 of the HTS permits the reallocation of the quota quantity of a dairy article listed in Chapter 99 among the countries of origin specified for a given article if it is determined that the quota quantity assigned to a particular country is not likely to be entered from that country within a given calendar year. I hereby determine that it is not likely that the quantity of condensed milk in airtight containers specified in HTS subheading 9904.10.06 for Denmark will be entered from that country during calendar year 1989.

Notice is hereby given that the 1989 unused quota quantity for condensed milk in airtight containers specified in HTS subheading 9904.10.06 for Denmark may be imported from Australia, Canada, Denmark and the Netherlands for the remainder of the 1989 quota year.

This quota quantity for HTS subheading 9904.10.06 will revert to the original supplying country on January 1, 1990.

Issued at Washington, DC, this 3rd day of May 1989.

Ann M. Veneman,

Administrator.

[FR Doc. 89-11947 Filed 5-17-89; 8:45 am]

BILLING CODE 3410-10-M

Soil Conservation Service

South Fork Little River Watershed, Kentucky

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Randall W. Giessler, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of Kentucky, is hereby providing notification that a record of decision to proceed with the installation of the South Fork Little River Watershed project is available. Single copies of this record of decision may be obtained from Randall W. Giessler at the address shown below.

FOR FURTHER INFORMATION CONTACT: Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Room 300, Lexington, Kentucky 40504, telephone 606-233-2747.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Randall W. Giessler,

State Conservationist.

Date: May 9, 1989.

[FR Doc. 89-11901 Filed 5-17-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Southeast Region Dealer/Interview Family of Forms.

Form Numbers: Agency-NOAA 88-12 and 37-701; OMB-0648-0013.

Type of Request: Revision of a currently approved collection.

Burden: 21,710 respondents; 3,656 reporting hours; average hours per response—.17 hours

Needs and Uses: Information on dealer purchases of fish and of fishing effort by fishermen is needed for stock assessments, for checking compliance with catch quotas, for regulatory analysis, and for fishery monitoring.

Affected Public: Businesses or other for-profit organizations, and small businesses or organizations.

Frequency: Monthly, weekly, and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 12, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organizations.

[FR Doc. 89-11928 Filed 5-17-89; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-570-003]

Shop Towels of Cotton From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on shop towels of cotton from the People's Republic of China. The review covers three exporters and four third-country resellers and the period October 1, 1986 through September 30, 1987. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1985 the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 26020) the final results of its last administrative review of the antidumping duty order on shop towels of cotton from the People's Republic of China (48 FR 45277, October 4, 1983). The petitioner, Milliken & Company, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notice of initiation on November 18, 1987 (52 FR 44161). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international 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).

Imports covered by this review are shipments of cotton shop towels. During the review period, cotton shop towels were classifiable under item 366.2840 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item 6307.10.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers three exporters and four third-country resellers and the period October 1, 1986 through September 30, 1987.

One firm, China Resources Transportation, had no shipments during the period. This firm is not known to have been a manufacturer or exporter of

the merchandise during or prior to the period and will be regarded as a new exporter for any shipments after the period.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the delivered, packed price to unrelated purchasers in the United States. We made adjustments for ocean freight. No other adjustments were claimed or allowed.

Foreign Market Value

We have concluded that the economy of the PRC is state-controlled for purposes of this administrative review. As a result, section 773(c) of the Tariff Act (prior to amendment by the Omnibus Trade and Competitiveness Act of 1988, which does not affect section 773(c) of the Tariff Act as it apples to this administrative review) requires us to use either the prices or the constructed value of such or similar merchandise sold by a country or countries whose economy is not state-controlled. Section 353.8 of the Commerce Regulations (19 CFR 353.8 (1988)) establishes a preference for determining foreign market value based upon sales prices in a non-state-controlled-economy country at a stage of economic development comparable to that of the state-controlled-economy country.

Of countries known to produce shop towels, we determined that India, Indonesia, Pakistan, the Philippines, Sri Lanka and Thailand were the countries comparable to the PRC in stage of economic development. We identified and contacted shop-towel producers in Indonesia, as was done in the investigation of sales at less than fair value. Those firms, however, did not respond. We were unsuccessful in identifying, or were not permitted by the foreign government to contact, producers in the other countries.

In accordance with § 353.8(c) of the Commerce Regulations (19 CFR 353.8(c) (1988)), we also attempted to calculate foreign market value based on the Chinese factors of production as valued in a non-state-controlled-economy country at a stage of economic developement comparable to that of the PRC. We obtained insufficient information, however, from comparable non-state-controlled-economy countries to value the Chinese factors of production.

Lacking information on sales on cotton shop towels in, and values for factors of production from a comparable non-state-controlled-economy country, we have based foreign market value on the prices of imports of the same class or kind of merchandise into the United States in accordance with § 353.8(a) of the Commerce Regulations (19 CFR 353.8(a) (1988)). We first examined those exporting countries we determined to be comparable to the PRC in stage of economic development, *i.e.*, India, Indonesia, Pakistan, the Philippines, Sri Lanka and Thailand. All of these countries, however, are known to confer export subsidies, as evidenced by affirmative countervailing duty determinations made by the Department. Therefore, since data concerning imports from other countries were available, we did not consider import prices from these countries.

Of the remaining countries exporting cotton shop towels to the United States, we determined that El Salvador, Bangladesh, Hong Kong, Korea, Malaysia, Mexico, Peru, and Turkey were the countries most comparable to the PRC in stage of economic development. Among this basket of countries, El Salvador, Koera, Malaysia, Mexico, Peru, and Turkey are known to confer subsidies on exports, as evidenced by affirmative countervailing duty determinations by the Department. Therefore, we based foreign market value on the weighted-average entered value of imports from Bangladesh and Hong Kong during the review period as indicated by the Department's IM–146 import statistics.

Preliminary Results of the Review

As as result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Exporter/Third-Country Reseller	Margin (percent)
China National Arts and Crafts Import and Export Corp. (CNART)	30.60
China National Arts and Crafts, Tianjin (CNART Tianjin)	30.60
CNART/Cusininere	[1] 37.20
CNART/ Fabric Enterprise	[1] 37.20
China National Textiles Import and Export Corp. (Chinatex)	73.22
Chinatex-Trans-Atlantic Sales	[1] 66.00
China National Native Produce and Animal By-Products Import and Export Corp.	86.10
China Resources Transportation	[2]

[1] No shipments during the period.
[2] Not a known exporter or reseller.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 30 days aftaer the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For any future entries of this merchandise from a new exporter, whose first shipment occured after September 30, 1987 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 30.60 percent shall be required. These deposit requirements are effective for all shipments of Chinese shop towels of cotton entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a (1988)).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Dated: May 8, 1989.

[FR Doc. 89–11929 Filed 5–17–89; 8:45 am]
BILLING CODE 3510–DS

[A–485–601]

Solid Urea From Romania; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to request from one manufacturer/exporter, the

Department of Commerce has conducted an administrative review of the antidumping duty order on solid urea from Romania. The review covers one manufacturer/exporter of this merchandise to the United States, I.C.E. Chimica ("Chimica"), and the period January 2, 1987 through June 30, 1988. There were no known shipments of this merchandise to the United States by Chimica during the period and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 26366) the antidumping duty order on solid urea from Romania. A manufacturer/exporter, Chimica, requested in accordance with 19 CFR 353.53a(a) that we conduct an administrative review. We published a notice of initiation on September 27, 1988 (53 FR 37617). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. 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 wharehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). Imports covered in this review are shipments of solid urea. During this review period such merchandise was classifiable under item number 480.3000 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item 0511.99-40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, Chimica, and the period January 2, 1987 through June 30, 1988. There were no known shipments of this merchandise to the United States by Chimica during the period and there are no known unliquiated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists:

Manufacturer/ Exporter	Time period	Margin (percent)
Chimica	1/2/87-6/30/88	[1] 90.71

[1] No shipments during the period; margin from the last period in which there were shipments.

Parties to the proceeding may request disclosure and/or an administrative protective order witnin 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter.

Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such comments or at a hearing.

Further, a provided for by 19 CFR 353.48(b), a cash deposit of estimated antidumping duties of 90.71 percent shall continue to be requied for all shipments of Romanian solid urea entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Dated: May 10, 1989.

[FR Doc. 89-11930 Filed 5-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-801]

Final Determination of Sales at Not Less Than Fair Value; Steel Wheels From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that steel wheels from Brazil are neither being, nor are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission ("ITC") of our determination.

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION: Contact J. David Dirstine (202) 377-5255 or Anne D'Alauro (202) 377-2923, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that steel wheels from Brazil are neither being, nor are likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the "Act").

Case History

Since the publication of our preliminary determination (*Preliminary Determination of Sales at Not Less Than Fair Value: Steel Wheels From Brazil* (54 FR 8780, March 2, 1989)), the following events have occurred. On April 10, 1989, the Department of Commerce ("the Department") held a public hearing. The petitioner, a domestic interested party, and the respondents submitted comments for the record in prehearing briefs on April 3, 1989, and in posthearing briefs on April 18, 1989.

Scope of Investigation

The United States has 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 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. In 1988, such merchandise was classifiable under item number 692.3230 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 8708.70.80. The HTS number is provided for convenience and Customs purposes. The written description remains dispositive.

In our preliminary determination, we stated that "[f]or purposes of the preliminary determination, we have treated rims or discs, whether imported seprately or together, as included in the scope of this investigation." The Department further reviewed information on this issue for this final determination.

We verified that during the period of review the only parts of steel wheels imported from Brazil into the United States were rims. Discs were not imported. The rims imported during the period of investigation ("POI") are separately traded (*i.e.*, sold as distinct articles of commerce). These rims are purchased by unrelated custom wheel manufacturers who combine the rims with non-Brazilian discs to make custom wheels at their own facilities. The disc and further processing add significant value to the custom wheel in which the Brazilian rim is only one component.

Petitioner initially argued that rims should be included within the scope of the order to prevent circumvention. The petition described the covered merchandise as wheels from Brazil, which included rims and centers for such wheels so as to avoid possible circumvention through the shipment of wheel components rather than finished wheels. In an October 7, 1988 letter to the Department, petitioner restated this position with regard to the rim market by asserting that its "intention was not to include within the scope of the imports subject to investigation rims sold as distinct articles of commerce and, therefore, not in circumvention of an order. Petitioner's concern lies with circumvention." In subsequent submissions, petitioner was inconsistent regarding the reasons for including rims in the scope. We conclude, however, that petitioner's primary concern is circumvention.

In past cases where petitioners have raised concerns about circumvention of any resulting order, the Department has specifically included parts in the scope of the investigation because of uncertainty as to the authority of the Department to include parts subsequent to the publication of an order where parts are imported to circumvent the order. *See, e.g., Cellular Mobile Telephones from Japan,* (50 FR 42577 (1985)). Now, however, section 781 of the Omnibus Trade and Competitiveness Act of 1988 not only clarifies that the Department has such authority but sets forth the criteria for dealing with this type of circumvention. Therefore, notwithstanding pre-1988 Act administrative precedents, it is not necessary to include rims in the scope of the proceeding.

Period of Investigation

Sales of steel wheels to original equipment manufacturers ("OEMs") account for more than 60 percent of the value of imports of the subject merchandise into the United States from Brazil. Steel wheels are normally sold to OEMs in the United States on the basis of long-term requirements contracts. We found that shipments to the United States by Rockwell-Fumagalli ("Fumagalli") during the February 1–July 31, 1988 investigation period were pursuant to agreements executed in November 1986. Therefore, under § 353.38(a) of our regulations, we extended the POI for Fumagalli to seven months by including November 1986 as well. *See Certain Forged Steel Crankshafts from Japan,* 52 FR 17999 (1987) and *Certain Granite Products from Italy,* 53 FR 27187 (1988). The POI for Borlem S.A. Empreendimentos Industriais ("Borlem") is February 1, 1988 through July 31, 1988.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price for sales of wheels to OEMs with the foreign market value for sales of wheels to OEMs in Brazil.

United States Price

As provided in section 772(b) of the Act, we used purchase price to represent the United States price for sales of steel wheels made by Borlem to an unrelated purchaser prior to importation of the merchandise into the United States.

The Department also determined that purchase price and not exporter's sales price was the most appropriate indicator of United States price for Fumagalli based on the following elements:

1. The merchandise was purchased or agreed to be purchased prior to the date of importation from the manufacturer or producer of the merchandise for exportation to the United States.

2. The selling agent located in the United States acted only as a processor of sales-related documentation and as a communication link with the unrelated U.S. buyers.

3. The wheels sold to OEMs were made-to-order and not sold through inventory. Although a party related to the seller took title to the wheels and held them in its warehouse after the sale was made, this was only to accommodate the "just-in-time" delivery terms stipulated in the requirements contract negotiated between the Brazilian producer and the U.S. EOM purchaser. All terms of the sale were settled in this contract and were not changed by the related party when it released the wheels to the U.S. OEM purchaser.

4. Warehousing for "just-in-time" delivery was the customary channel of trade for wheels sold by Fumagalli to the U.S. OEM purchaser.

We calculated purchase price based on the f.o.b. warehouse, Troy, Michigan, or packed f.o.b. Brazilian factory prices to unrelated purchasers in the United States. Where appropriate, we made deductions for brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. duty, and U.S. inland freight. In accordance with section 772(d)(1)(C) of the act, we made additions for indirect taxes not collected by reason of the exportation of the merchandise.

Foreign Market Value

We calculated foreign market value for wheel sales by Fumagalli and Borlem based on delivered home market packed prices to unrelated purchasers in accordance with section 773(a) of the Act.

We made deductions, where appropriate, for inland freight and inland insurance. We deducted home market packing costs and added U.S. packing costs. We made circumstance of sale adjustments for differences in credit, post-sale warehousing expenses, and indirect taxes between the two markets.

In accordance with section 773(a)(4)(C) of the Act, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise where there were no identical products in the home market with which to compare products sold in the United States. These adjustments were based on differences in the costs of materials, direct labor and factor overhead.

Currency Conversion

When calculating foreign market value, we normally make currency conversions in accordance with section 353.56 of our regulations, using the certified exchange rates furnished by the Federal Reserve Bank of New York. Since the Federal Reserve Bank of New York stopped providing exchange rate information for Brazil prior to the period of this investigation, we used the monthly exchange rates provided by the International Monetary Fund ("IMF").

Analysis of Comments Received

General Comments

Comment 1: Both the petitioner and the respondents have commented on the issue of excluding or including rims within the scope of this investigation and the methodology that should be used to establish the foreign market value of this product.

Department's Position: The scope issue is discussed in the section on Scope of Investigation. Since the Department determined that rims sold as distinct articles of commerce are not included in the scope of this investigation, comments relating to the Brazilian rim exporter, Borlem Do Nordeste, and fair value comparisons for rims are not addressed in this notice

Petitioners' Comments

Comment 1: Petitioner argues the Department improperly accepted Borlem's use of the Adiantamento Sobre Contrato De Cambio ("ACC") interest rate in calculating imputed credit costs on the basis that the ACC rate is a preferential rate which is effectively an export subsidy.

Department's Position: We disagree. The Department previously determined in *Carbon Steel Plate from Brazil* (48 FR 2568, January 20, 1983) that ACC financing is a program that, although regulated by the Brazilian Government, permits Brazilian companies to discount foreign exchange accounts receivables with private banks at rates established by commercial market considerations. In this case, we verified that the ACC program is still in effect. The ACC rate was used to impute credit costs on the U.S. side since, although Borlem did not discount its export receivables associated with the exports under investigation during the POI, the ACC remains the most common means of financing export receivables and, consequently, is a reasonable approximation of export financing expenses.

Comment 2: Petitioner faults the difference in merchandise adjustment reported by Borlem and used by the Department in making fair value comparisons between the home market and export model steel wheels. To begin, the petitioner questions the fact that the amount of steel input reported for the lighter domestic wheel is greater than the amount reported for the heavier export wheel to which it is being compared. Even accepting the difference in merchandise amount reported, however, petitioner points out an error made by the Department in converting cruzados to dollars which significantly understates the dollar amount of the adjustment necessary. Further faults in the adjustment include the exclusion of financing and inventory carrying costs in the steel replacement cost and the use of a simple average of steel prices for replacement costs during the month rather than a daily weighted average. Finally, the petitioner states that the Department was unable to verify the cost or volume of steel input for the export wheel.

Department's Position: The petitioner misunderstands the cost reported for the steel input utilized in the difference in merchandise adjustment for the domestic wheel model. During the POI, the disc for this specific model was produced by Borlem do Nordeste, and the material input cost reflects both the steel input cost as well as additional disc production costs incurred by Borlem do Nordeste. Contrary to petitioner's assertion, in those months where there were two steel prices, the Department verified that Borlem used an appropriately weighted average of the two prices and not a simple average. Furthermore, since we also verified that Borlem paid list price for steel, in lieu of actual steel purchases during the month of March, the Department accepted the list price for that month for the export model. In verifying the difference in merchandise adjustment, the Department verified the weight of the steel input for representative models, including the export model, and is satisfied that the difference in merchandise adjustment adequately reflects the relative weight of each model. The Department, however, agrees that in converting the difference in merchandise adjustment from cruzados to dollars, an error was made in the conversion resulting in an incorrect dollar amount. This error has been corrected in our final determination. The Department disagrees with petitioner's assertion that inventory carrying costs and financing costs should be included in a difference of merchandise adjustment. Cost differences in this calculation are limited to differences in variable costs of production. Imputed costs are not considered part of the Department's difference in merchandise adjustment.

Comment 3: Petitioner argues that the full amount of the Imposto De Circulacao De Mercadorias ("ICM") tax should not have been deducted from the cost of materials in calculating U.S. packing expenses since Borlem bears the cost of the ICM tax for one to twelve months after paying it. In addition, petitioner argues that Borlem incorrectly excluded ICM and Imposto Sobre Produtos Industrializados ("IPI") indirect taxes from its steel replacement cost calculations.

Department's Position: We disagree. The ICM and IPI taxes Borlem paid on input materials for export products were applied each month as credits against home market tax liability. Since Borlem has sufficient home market taxes against which to apply these taxes, there is no loss in value, *i.e.*, additional cost, prior to application of the credits.

Comment 4: Petitioner argues that the Department incorrectly ignored a substantial number of shipments of wheels to the United States. Further, the Department failed to determine how many shipments occurred under contracts prior to the POI and therefore cannot determine whether all relevant shipments were reported or whether the shipments that were reported are sufficiently representative of the total shipments that took place during the relevant period.

Department's Position: We disagree. We confirmed at verification that shipments made by Borlem and Fumagalli to OEMs pursuant to contracts executed during the POI accounted for more than 60 percent of the value of imports of the subject merchandise into the United States from Brazil. Further, we disagree with petitioner's contention that the Department failed to determine how many Borlem shipments occurred under contracts consummated during the POI. During verification at Borlem, we conducted traces on shipments made during the POI and confirmed that those shipments investigated were made against two contracts executed during the POI. A third contract concluded within the POI had had no shipments as yet. Remaining shipments were made pursuant to contracts with sale dates outside the POI.

Comment 5: Petitioner argues that the Department incorrectly determined foreign market value for Borlem's home market sales because these sales were made at prices below the cost of production. According to the petitioner, Borlem's own submissions provided to the Department gave the Department

ample reason to suspect that Borlem's home market sales were being made below cost. Petitioner, therefore, concludes that the Department should have disregarded home market sales and instead based its determination of foreign market value on constructed value or, alternatively, best available information.

Department's Position: Petitioner's below cost allegation is based on home market pricing data which was subsequently revised by Borlem to reflect significant price increases. The cost comparison in petitioner's analysis is made against a net home market price exclusive of a sizable imputed interest expense; Borlem's actual financing expenses were considerably lower. For these reasons, the Department disagrees with petitioner's allegation that the home market sales information provides grounds to suspect that Borlem was selling below cost of production in the home market. Additionally, the allegation of sales at less than the cost of production was raised for the first time by petitioner in its April 3, 1989, prehearing brief, 37 days before the due date of the final determination in this investigation. Based on the number of days petitioner had access to and could have questioned the respondent's data, the Department determines this allegation to have been made too late in the investigation to conduct a cost of production analysis.

Comment 6: Petitioner argues that Fumagalli's aftermarket sales in the United States must be compared with similar sales in the home market for purposes of the Department's final determination.

Department's Position: We disagree. As we stated in our response to Comment 4, shipments made by Borlem and Fumagalli to OEMs pursuant to contracts during the POI accounted for more than 60 percent of the value of imports of the subject merchandise into the United States from Brazil.Therefore, having examined 60 percent, we determined that it was not necessary to consider aftermaket sales. See 19 CFR section 353.38(a).

Comment 7: Petitioner argues that Fumagalli's warehouse interest expense incurred in the United States must be recalculated for the Department's final determination. Fumagalli's reported interest rate and inventory time used for calculating warehouse interest expense differed from that found by the Department at verification. Even though the Department stated in its verification report that the net effect of the discrepancies was negligible, the only way to determine the precise effect is to correct the calculation.

Department's Position: We agree and have made these changes in our final determination.

Comment 8: Petitioner argues that the full amount of the terminal handling and warehouse pallet charges reported in Fumagalli's questionnaire response should be deducted in determining U.S. price.

Department's Position: We disagree. We exmined original documentation at verification and determined that Fumagalli received refunds for overpayments for both the terminal handling and warehouse pallet charges. Adjustments were made for such refunds applicable to subject merchandise for the final determination.

Comment 9: Petitioner argues that Fumagalli's home market credit expense must be derived from the sight (discounted cash) price, instead of the gross invoiced price payable at a specified time in the future. This would more accurately reflect the true opportunity cost to the respondent.

Department's Position: We agree. We confirmed at verification that Fumagalli's calculations for the home market credit adjustment were based on the sight price.

Respondents' Comments

Comment 1: Fumagalli argues that the Department made inappropriate adjustments when May, June, and July shipments to a U.S. OEM of a wheel model sold in April 1989 were compared with April sales of the comparative home market model. Fumagalli states that the use of the April exchange rate creates distortions related to movement charges incurred in cruzados for shipments during May, June, and July. Further, Fumagalli states that since the monthly inflation rate in Brazil during the POI was 20 to 30 percent, the nominal cruzado values of these movement charges incurred between April and July exceeded 100 percent. Fumagalli suggests that the Department could make fair price comparisons for these shipments occurring in months subsequent to the date of sale if it converted cruzado expenses at the exchange rate in effect when the expenses occurred.

Department's Position: We recognize that our methodology of converting the cruzado expenses incurred in May, June, and July at the April exchange rate introduces potential distortions relating to movement charges. When the date of sale and the date of shipment occur in the same month, use of the date of sale exchange rate to convert movement expenses to dollars makes sense, notwithstanding Brazil's hyperinflation, since the converted values are being used in comparing foreign market value to U.S. price at the same point in time. When the date of sale occurs in a month preceding the date of shipment, however, application of the earlier date of sale exchange rate may result in creation of dumping margins solely due to the rapid depreciation of Brazil's currency during the lag between months. However, since no dumping margins were found under our original methodology and since the proposed adjustment would only result in a lower margin, there is no reason to alter our methodology for these final results. Should be discover clerical errors or other factors which would result in margins, we would then take into account appropriate currency conversion for movement charges.

Comment 2: Fumagalli states that there were errors in the computer program. Values supplied in the original questionnaire response were used rather than those later revised and verified by the Department.

Department's Position: The Department accepted and verified the resubmitted information. We also adjusted for the omission of the IPI indirect tax in the computer program which we explained to both petitioner and respondents at disclosure. These adjustments were taken into consideration for the final determination.

Comment 3: Borlem argues that there is no administrative justification in using the monthly average exchange rates provided by the IMF. The Department clearly has the authrity to determine the proper exchange rates for its fair value analysis where the Federal Reserve Bank of New York does not provide appropriate exchange rates to the Department. Borlem also states that where the Federal Reserve Bank of New York fails to provide appropriate exchange rates, the Department should use its "residual discretion" to determine, independent of another government agency, what exchange rates should be used to convert foreign currency in a less than fair value determination. The monthly exchange rate information provided by the IMF is based on daily exchange rates determined by the Central Bank of Brazil and, therefore, the ultimate source of the Department's monthly exchange rate and the daily exchange rates provided by Borlem is one and the same.

Department's Position: The Department typically calculates monthly foreign market values in hyperinflationary cases to compensate for the distortions that would arise from using a single, six-month average foreign market value. We recognize that

exchange rate variations within a single month may introduce similar distortions, but on a smaller scale.

Normally, all currency conversions are made at the rates certified by the Federal Reserve Bank. During the POI, no certified rates were available for Brazil from the Federal Reserve Bank, but monthly rates were available from the IMF. We have determined in this case that the exchange rate variations within one month using IMF rates are not so great as to warrant calculating foreign market value on a daily basis from a third source. Further, the Department views the IMF as an official international organization whose data reflect the financial exchange situation during the POI. Therefore, we used the monthly exchange rate provided by the IMF as the best information available.

Comment 4: Borlem argues that the Department should include all of the sales and foreign market value information provided regarding shipments made after the POI that were based on sales during the POI.

Department's Position: We disagree. We determined that the investigation covered a minimum of 60 percent of the value of imports of the subject merchandise into the United States during the POI. See the "Department's Position" in the response to Petitioner's Comment 6.

Final Results

We determine that steel wheels from Brazil are neither being, nor are likely to be, sold in the United States at less than fair value as provided in section 735 of the Act.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the consent of the Assistant Secretary for Import Administration.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 10, 1989.

[FR Doc. 89-11931 Filed 5-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-542-401]

Certain Textile Mill Products and Apparel From Sri Lanka; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce has terminated the countervailing duty administrative review of certain textile mill products and apparel from Sri Lanka initiated on April 28, 1989.

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION: On March 8, 1989, the Government of Sri Lanka requested a countervailing duty administrative review of certain textile mill products and apparel from Sri Lanka for the period January 1, 1988 through December 31, 1988. No other interested party requested the review. On April 28, 1989, the Department of Commerce initiated the administrative review for that period (54 FR 18320). The Government of Sri Lanka withdrew its request for review on May 3, 1989. As a result, the Department has determined to terminate the review.

This notice is published in accordance with § 355.22(a)(3) of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Date: May 11, 1989.

[FR Doc. 89-11932 Filed 5-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-489-502]

Certain Welded Carbon Steel Pipe and Tube Products From Turkey; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce has terminated the countervailing duty administrative review of certain welded carbon steel pipe and tube products from Turkey initiated on April 28, 1989.

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION: On March 31, 1989, the Borusan Group and Mannesmann-Suemerbank Boru Enduestrisi T.A.S. ("Mannesmann") each requested a countervailing duty administrative review of certain welded carbon steel pipe and tube products from Turkey for the period January 1, 1988 through December 31, 1988. No other interested parties requested the review. On April 12, 1989, prior to initiation of the review, Mannesmann withdrew its request. On April 28, 1989, the Department of Commerce initiated the administrative review (54 FR 18320). On May 5, 1989, the Borusan Group withdrew its request for review. As a result, the Department has determined to terminate the review.

This notice is published in accordance with § 355.22(a)(3) of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Date: May 4, 1988.

[FR Doc. 89-11933 Filed 5-17-89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: West Palm Beach, FL

May 12, 1989.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is established at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the

budget period October 1, 1989 to September 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the West Palm Beach, Florida geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educaitonal institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishement and operation viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and tyechnical assistance (M&TA) rendered must be charged by MBDAs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding wil be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is June 20, 1989. Applications must be postmarked on or before June 20, 1989.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street Suite 505, Atlanta, Georgia 30309, 404/347-4091, Area Code/Telephone Number.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development, Catalog of Federal Domestic Assistance

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

Date: May 12, 1989.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree St., NE., Suite 505, Atlanta, Georgia June 6, 1989 at 9:00 a.m.

[FR Doc. 89-11909 Filed 5-17-89; 8:45 am]

BILLING CODE 3510-21-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Opening Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 14-15 June 1989.

Time: 0800-1700 hours each day.

Place: Fort Monmouth, New Jersey.

Agenda: The Army Science Board 1989 Summer Study on Maintaining State-of-the-Art in the Army Command and Control System will meet to study the level of support planned to be provided to ACCS by the Software Support Center. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-11960 Filed 5-17-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 13-14 June 1989.

Time: 0830-1630 hours each day.

Place: Dallas, Texas.

Agenda: The Army Science Board Ad Hoc Subgroup on Total Quality Management will meet for a tour and a series of discussions with the Texas Instrument Corporation. The Ad Hoc Subgroup will discuss the Texas Instrument corporate approach to quality following completion of the tour. These meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-11959 Filed 5-17-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Grant to Hansen Engine Corporation

Agency: Department of Energy (DOE).

Action: Notice of unsolicited financial assistance award.

Summary: The DOE announces that pursuant to 10 CFR 600.14, it is issuing Grant Number DE-FG01-89CE90049 to Hansen Engine Corporation to support "A Proposal to Explore and Assess the Energy Conservation Potential and Expand the Technology Base for Application of Hansen Rotary Valves for Gas Exchange and Combustion Control in Internal Combustion Engines."

Scope: This grant will aid in providing funding for an alternative technology to the conventional valve train utilized in most automobile engines.

The Hansen Rotary Valve concept offers significant advantages over the conventional poppet-type and other rotary valves used in today's internal combustion engines. These advantages include: elimination of reciprocating mass dynamics; un-throttled intake manifold (therefore, no significant pressure differential for throttling loss); peak volumetric efficiency at any desired operating speed through

variable valve timing capability; significant reduction in friction and leakage over other rotary valve concepts, and resolves the trade-off between gas leakage and sliding seal friction.

Conventional rotary valves have relied upon spring-loaded seals to obtain those contact loads required for effective gas sealing during high pressure operation. Unnecessary friction penalties during low pressure operation have been the result. The unique and innovative Hansen design allows for simultaneous reduction of both the pressure-active area and the contact load area, thereby reducing undesirable forces while maintaining or improving the contact unit-loads necessary for sealing.

The work will be performed in three (3) phases. Each phase will be reviewed and evaluated by DOE before start-up of subsequent phase.

Phase I is a two-year experimental and theoretical investigation activity with an objective to research the effect of the Hansen concept on the combustion and related processes. Researchers at the Sandia Combustion Research Facility under the ECUT Combustion Technology Program, will incorporate the Hansen Rotary Valve into a research engine with suitable optical access. Together, they will perform specific experiments using laser-based optical diagnostic techniques developed at the Sandia Combustion Research Facility. A theoretically-based computer model will be developed and validated. The Sandia research effort will be supported separately under the current Combustion Technology Program activity. The active participation of Sandia is in the first phase.

In *Phase II*, Hansen proposes an eighteen month (18) effort to utilize the modeling capability from Phase I to provide the basis for improving combustion characteristics and optimizing fluid motion. *Phase III* is proposed as an 18 month effort to employ the results of the previous two phases to verify the energy conservation potential of the Hansen concept in a multi-cylinder engine.

The Hansen Engine Corporation has the expertise and facilities to capably complete the proposed effort. Hansen researchers possess sufficient knowhow and expertise in engine and component design.

Mr. Hansen is co-founder of the company and has 20 years technical experience and holds numerous patents relating to internal combustion engine and air/gas compression technology. Mr. Cross is Vice President of the company and the co-inventor of the Hansen Rotary Valve.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to Hansen Engine Corporation. The proposed effort will confirm the energy conservation potential derived from the successful development and application of the Hansen Rotary Valve as a replacement for the conventional poppet-type valve in today's internal combustion engines. Successful commercialization and subsequent incorporation of this unique and innovative concept into the development of internal combustion engines with reduced energy consumption potential in each of the U.S. economic sectors. It has been determined that this project has high technical merit which has a high probability of achieving the anticipated objectives.

The term of this grant shall be five (5) years from the effective date of award.

For Further Information Contact: U.S. Department of Energy, Office of Procurement Operations, Attn: Rosemarie H. Marshall, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–11979 Filed 5–17–89; 8:45 am]

BILLING CODE 6450–01–DM

Federal Energy Regulatory Commission

[Docket No. QF89–234–000]

Archer-Daniels-Midland Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

May 15, 1989.

On May 5, 1989, Archer-Daniels-Midland Company of 4666 Faries Parkway, Decatur, Illinois 62526, submitted for filing an application for certification of a facility as a qualifying cogneration facility pursuant to §292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 5450 Locust Road S.W., Cedar Rapids, Iowa 52404. The facility will consist of three coal-fired steam generators, three back pressure steam turbine generators, and a condensing steam turbine generator. The thermal energy recovered from the facility will be used for evaporation, drying, distillation, extraction and cooking processes at Applicant's corn processing plant. The net electrical power production capacity of the facility will be 67 MW. The primary source of energy will be coal. The installation of the facility began in October, 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Eenrgy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–11940 Filed 5–17–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ89–3–24–001 and TF89–1–24–001]

Equitrans; Supplemental Filing

May 12, 1989.

Take notice that on May 9, 1989, Equitrans filed Seventh Revised Sheet No. 10, Eighth Revised Sheet No. 10, First Revised Sheet No. 34, and Second Revised Sheet No. 34 to its FERC Gas Tariff, Original Volume No. 1.

Equitrans states that Seventh Revised Sheet No. 10 and First Revised Sheet No. 34 contain a pagination correction; that Schedule D1 workpapers support the computation for the decrease; and that the reason for the increase of $.0018 per dekatherm in the D1 component was due to an increase in the D1 charges paid to pipeline supplier Texas Eastern Transmission Corporation.

Equitrans states that Eighth Revised Sheet No. 10 and Second Revised Sheet No. 34 contains a pagination correction, and that a Schedule D1 workpaper supports the computation for Rate Schedule ISS.

Equitrans states that copies of this filing has been made upon each of its jurisdictional customers, interested state commissions, and upon each party on the service list in Docket No. CP86–676–000.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). 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 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. 89-11938 Filed 5-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER89-393-000, et al.]

Florida Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 12, 1989.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Co.

[Docket No. ER89-393-000]

Take notice that Florida Power & Light Company (FPL) on May 1, 1989, tendered for filing revised Cost Support Schedules C, F, and G (together with Cost Support Schedule F Supplements) that: (1) Support the revised daily capacity charge for sales under Service Schedule B (Short-Term Firm Interchange Service) of FPL's Contracts for Interchange Service with Florida Municipal Power Agency, Florida Power Corporation, Fort Pierce Utilities Authority, City of Gainesville, City of Homestead, Jacksonville Electric Authority, City of Key West, Kissimmee Utility Authority, City of Lakeland, Utilities Commission, City of New Smyrna Beach, Orlando Utilities Commission, City of St. Cloud, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., City of Starke, Tampa Electric Company, and City of Vero Beach; and (2) support the revised Capacity Reservation Charges for sales under FPL's Agreements to provide Short Term Power and Energy with Utilities Commission, City of New Smyrna Beach and City of Key West and revised Cost Support Schedules D-S, F-S, and G-S (together with Cost Support Schedule F-S Supplements) that support the revised daily capacity charge for sales under Service Schedule B-S (Short-Term Interchange Service) of FPL's Supplementary Agreement Number One to the Contract for Interchange Service with Seminole Electric Cooperative, Inc. FPL states that the revised capacity charges have been calculated in accordance with the provisions of Service Schedule B and Service Schedule B-S and FPL's Agreements to provide Short Term Power and Energy and represent an updating of the currently effective capacity charges to reflect more current costs.

FPL requests an effective date of May 1, 1989, and therefore requests waiver of the Commission's notice requirements.

According to FPL, a copy of this filing was served upon all of the above named parties and the Florida Public Service Commission.

Comment date: May 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. New England Hydro-Transmission Corp., New England Hydro-Transmission Electric Co., Maine Electric Co.

[Docket No. ER89-394-000]

Take notice that on May 1, 1989, New England Hydro-Transmission Corporation (NEHT), New England Hydro-Transmission Electric Company (NEH) and Maine Electric Power Company (MEPCO) filed, respectively: (1) An Amendment to the Phase II New Hampshire Transmission Facilities Support Agreement (the NEHT Agreement); (2) an Amendment to the Phase II Massachusetts Transmission Facilities Support Agreement (the NEH Agreement); and (3) the Phase II Maine Electric Power SVC Facilities Support Agreement (the SVC Support Agreement).

MEPCO states that the SVC Support Agreement provides that NEHT will support the investment and expense associated with MEPCO's construction and operation of static var compensator equipment. NEHT states that the Amendment to the NEHT Agreement is necessary to permit NEHT to bill Participants in Phase II of the New England-Quebec interconnection for payments incurred under the SVC Agreement and also to permit one of the Participants to grant certain rights to its third party lenders. NEH states that the Amendment to the NEH Agreement is necessary to permit one of the Participants to grant certain rights to its third party lenders.

Comment date: May 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. ER89-395-000]

Take notice that on May 2, 1989, Southern California Edison Company (Edison) tendered for filing a change of rates for transmission service as embodied in Edison's agreements with the following entities which reflects an increase in rate of return from 10.75 percent to 10.91 percent authorized by the California Public Utilities Commission (CPUC) to be made effective January 1, 1989.

	Rate schedule FERC No.
1. Arizona Electric Power Cooperative (AEPCO).	131, 161.
2. Arizona Public Service Company (APS).	185.
3. City of Burbank (Burbank).	166.
4. California Department of Water Resources (CDWR).	38, 112, 113, and 81.
5. City of Los Angeles Department of Water and Power (DWP).	102, 118, 140, 141, 163, and 188.
6. City of Glendale (Glendale).	143.
7. M-S-R Public Power Agency (M-S-R).	153.
8. Pacific Gas and Electric company (PG&E).	117, 147.
9. City of Pasadena (Pasadena).	158.
10. San Diego Gas & Electric Company (SDG&E).	151, [1] NA
11. Western Area Power Administration (WAPA).	120.

[1] NA=FERC rate number "not available", pending approval.

Edison requests waiver of the Commission's prior notice requirement and an effective date for these rate changes of January 1, 1989.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11939 Filed 5-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3021-018 Pennsylvania]

Allegheny Hydro No. 8, L.P. and Allegheny Hydro No. 9, L.P.; Availability of Environmental Assessment

May 12, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license for the Allegheny River Locks and Dams Nos. 8 & 9 Project to construct a 38.7-mile-long transmission line in Armstrong and Indiana Counties, Pennsylvania. The staff of OHL's Division of Project Compliance and Administration has prepared an environmental assessment (EA) for the proposed action. In th EA, staff concludes that approval of the amendment of license would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11897 Filed 5-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-382-000, et al.]

K N Gas Marketing, Inc., et al.; Applications for Blanket Certificates With Pregranted Abandonment [1]

May 12, 1989.

Take [1] notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 31, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CI89-382-000	4-24-89	K N Gas Marketing, Inc., P.O. Box 15265, Lakewood, CO 80215.
CI89-391-000	4-28-89	Anthem Energy Co., 333 Clay Street, Suite 2000, Houston, TX 77002.

[FR Doc. 89-11898 Filed 5-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1306-000, et al.]

Questar Pipeline Co., et al.; Natural Gas Certificate Filings

May 12, 1989.

Take notice that on the following filings have been made with the Commission:

1. Questar Pipeline Co.

[Docket No. CP89-1306-000]

Take notice that on May 4, 1989, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP89-1306-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Western Gas Processors, Inc. (Western Gas), under the blanket certificate issued in Docket No. CP88-650-000 pursuant to section 7 of the Natural Gas Act, all or more fully set forth in the request on file with the Commission and open to public inspection.

Questar Pipeline states that pursuant to a Transportation Agreement dated March 27, 1989, under its Rate Schedule T-2, proposes to transport up to 40,000 MMBtu per day of natural gas for Western Gas from various points on Questar Pipeline's system to an interconnection with Colorado Interstate Gas Company, who is a subsequent transporter of natural gas for Western Gas.

Questar also states that the maximum day, average day, and annual transportation 40,000 MMBtu, 25,000 MMBtu and 9,125,000 MMBtu, respectively.

Questar further states it commenced their service April 8, 1989, as reported in Docket No. ST-3322-000.

Comment date: June 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Co.

[Docket No. CP89-1300-000]

Take notice that on May 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1300-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service on behalf of Catamount Natural Gas, Inc. (Catamount), a marketer 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 which is on file with the Commission and open to public inspection.

United states that the total volume of gas to be transported for Catamount would be on a peak day 51,500 MMBtu, on an average day 51,500, and on an annual basis 18,797,500 MMBtu.

United indicates that it would receive the gas at various existing receipt points in Louisiana and deliver the gas at various delivery points in Louisiana and Mississippi. The receipt and delivery points are listed in Exhibits A and B of the transportation agreement of December 25, 1988, as amended, which provides for this service.

It is stated that the transportation of natural gas for Catamount commenced on March 14, 1989, as reported in Docket No. ST89-3095-000, pursuant to the 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations.

Comment date: June 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

3. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89-1309-000]

Take notice that on May 14, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1309-000 a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Transco's blanket certificate issued in Docket No. CP88-328-000 for authorization to provide gas for Entrade Corporation (Shipper), all as more fully set forth in the request which is on file with the Commission and available for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day would be 610,000 dt; on an average day would be 610,000 dt; and on an annual basis would be 222,650,000 dt.

4. Texas Gas Transmission Corp.

[Docket No. CP89-1311-000]

Take notice that on May 4, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1311-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for the Proctor and Gamble Company (Proctor and Gamble) under the blanket certificate 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 on file with the Commission and open to public inspection.

Specifically, Texas Gas requests authority to transport on a peak day up to 4,000 MMBtu of natural gas from various receipt points on Texas Gas' system located in the States of Indiana, Kentucky, Tennessee, Illinois, Arkansas, Ohio and both onshore and offshore Texas and Louisiana for redelivery to Proctor and Gamble in the State of Ohio. Further, Texas Gas states that the average daily and annual transportation quantities are estimated to be 3,000 MMBtu and 1,100,000 MMBtu, respectively.

Texas Gas states that transportation service for Proctor and Gamble commenced on March 27, 1989, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported with the Commission in Docket No. ST89-2977.

Comment date: June 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. East Tennessee Natural Gas Co.

[Docket No. CP89-1314-000]

Take notice that on May 5, 1989, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed in Docket CP89-1314-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the interim increase in contract demands of certain of its customers and an interim adjustment in the supplemental winter service (SWS) of certain customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to increase the contract demands of certain of its customers and to increase and decrease SWS volumes for certain of its customers, as specifically detailed in the application, for a one-year period beginning November 1, 1989. Applicant indicates that for the interim period it would increase its customers' daily contract demands by an aggregate of 31,178 MMBtu and rearrange its customers' SWS service by an aggregate increase of 27,675 MMBtu on peak day and by an aggregate decrease of 191,800 MMBtu on an an annual basis.

Applicant states that to provide the revised service it proposes to utilize supplies purchased from Equitable Resources (Equitable) to be delivered at Nora, Virginia, in the amount of 8,000 Mcf per day; East Tennessee LNG in the amount of 5,165 Mcf; winter service volumes purchased from Chattanooga Gas Company (Chattanooga) in the amount of 13,000 Mcf per day; and spot purchases delivered via Tennessee Gas Pipeline Company in the amount of 1,708 Mcf per day. Applicant states that the Equitable and Chattanooga supplies are for one year commencing November 1, 1989.

Applicant states that due to the location of the supplies entering the East Tennessee system, no facilities would be required to render the proposed SWS rearrangements and contract demand increases.

Applicant states that it filed in Docket No. CP88-683-000 for authority to construct and operate facilities to expand pipeline capacity and for authority to rearrange its customers' maximum daily quantities, increase the contract demand and authority to increase and decrease the SWS service of subscribing customers, all to be effective prior to the 1989-90 winter heating season. Applicant states, however, that it has become apparent that due to the passage of time it would be unable to construct the necessary facilities prior to the 1989-90 winter heating season. Applicant indicates that to be assured of being able to meet the customers' requirements for the upcoming winter heating season, it is proposing the requested interim service.

Comment date: June 2, 1989, in accordance with Standard Paragraph F at the end of this notice.

6. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89-1316-000]

Take notice that on May 5, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1316-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Transco Energy Marketing Company (Shipper), a marketer of natural gas, under Transco's blanket certificate issued in Docket No. CP88-328-000 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.

Transco proposes to transport, on an interruptible basis, up to 140,000 dt equivalent of natural gas on a peak day, 35,000 dt equivalent on an average day and 51,000,000 dt equivalent on an annual basis for Shipper. It is stated that Transco would receive the gas for Shipper's account at various existing points on Transco's system in Louisiana, offshore Louisiana, Texas, offshore Texas, Alabama, Georgia, Pennsylvania and New Jersey, and would deliver equivalent amounts at existing points in Texas, Louisiana and Delaware. It is asserted that the transportation service would be effected using existing facilities and that no construction of facilities would be required. It is explained that the transportation service commenced March 29, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3002.

Comment date: June 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1321-000]

Take notice that on May 5, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1321-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and

the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Manville Sales Corporation (Manville), a shipper and end-user of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000 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.

Panhandle proposes to transport up to 6,000 dekatherms (dt) of natural gas equivalent per day on an firm basis on behalf of Manville pursuant to a transportation agreement dated April 1, 1989, between Panhandle and Manville. Panhandle would receive the gas from Trunkline Gas Company in Douglas County, Illinois and deliver equivalent volumes, less fuel used and unaccounted for line loss to Columbia Gas Transmission Corporation in Paulding, Darke and Lucas Counties, Ohio.

Panhandle states that the estimated daily and annual quantities would be 6,000 dt and 2,190,000 dt, respectively. Service under § 284.223(a) commenced on April 1, 1989, as reported in Docket No. ST89–3172–000.

Comment date: June 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP89–1323–000]

Take notice that on May 8, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1323–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP86–582–000 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.

Natural proposes to transport natural gas on an interruptible basis for Cabot Energy Marketing (Cabot), a marketer of natural gas, pursuant to an interruptible transportation service agreement dated June 9, 1988 (#IGP–1122). Natural proposes to transport on a peak day up to 500,000 MMBtu per day; on an average day up to 30,000 MMBtu; and on an annual basis 10,950,000 MMBtu of natural gas for Cabot. Natural proposes to receive the gas for Cabot's account at receipt points located in Texas, Offshore Texas, Illinois, Louisiana, Offshore Louisiana, Oklahoma, New Mexico, Arkansas, Kansas, Nebraska, and Iowa. Natural would redeliver the gas at delivery points located in Louisiana, Offshore Louisiana, Illinois, New Mexico, Oklahoma, Arkansas, and Texas.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on March 3, 1989, as reported in Docket No. ST89–3425–000.

Comment date: June 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP89–1328–000]

Take notice that on May 5, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–1328–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon by reclaim measuring and appurtenant facilities serving Smith Sand Company (Smith) in Finney County, Kansas, and to abandon the transportation of gas through said facilities under WNG's blanket certificate issued in Docket No. CP82–479–000, 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.

WNG states that Smith has requested that the facilities be reclaimed. It is stated that the measuring and appurtenant facilities located in the Northeast Quarter of Section 30, Township 24 South, Range 32 West, Finney County, Kansas, were installed to serve Smith's asphalt plant and was certificated in Docket No. CP71–64. It is further stated that the facilities to be abandoned are all above ground. The total cost of the abandonment is approximately $150 with an estimated salvage of $0.

Comment date: June 26, 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 CFT 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 or 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. 89–11943 Filed 5–17–89; 8:45am]

BILLING CODE 6717–01–M

[Docket No. RP89-152-000]

Vesta Energy Co. v. Williams Natural Gas Co.; Complaint, Request for Evidentiary Hearing and Request for Initiation of Investigation

May 12, 1989.

Take notice that on April 26, 1989, Vesta Energy Company (Vesta) filed a Complaint, Request for Evidentiary Hearing and Request for Initiation of Investigation concerning Williams Natural Gas Company (Williams). Vesta seeks a declaration (1) that Williams has unlawfully retained substantial quantities of Vesta's gas and unlawfully assessed imbalance overrun penalties in violation of section 5 of the Natural Gas Act (NGA) and § 25.4 of the General Terms and Conditions (Traiff General Conditions) of its Tariff; and (2) that Williams has unlawfully assessed penalties for overruns during an alleged curtailment period in violation of sections 4 and 5 of the NGA and Section 7 of Article 13 of the Tariff General Conditions. In addition, Vesta requests the Commission to order Williams to return to Vesta the quantity of gas it continues unlawfully to retain and to refund an amount equal to the difference between the price for which Vesta could have sold the gas at the time of its retention by Williams and the price at the time of the return of the gas to Vesta.

Vesta points out Williams' unreasonable application of Section 25.4 of the Tariff General Conditions to correct an imbalance existing at the end of January 1988. After Williams advised Vesta of this imbalance in December 1988, Vesta undertook a plan to reduce its imbalance by January 31, 1989. Vesta that it was led by Williams to believe that its plan was acceptable. Vesta states that unusually warm January weather hindered full implementation of its plan. Vesta states that in late February Williams notified Vesta that it found Vesta's efforts to remedy the imbalance unacceptable, and asserted ownership over more than 200,000 MMBtu of gas. Vesta states that at the same time, under a different but virtually identical transportation agreement, Williams charged Vesta over $55,000 for imbalance overrun penalties because Vesta had taken more gas from the system than Vesta delivered to it during the same period. In so doing, Vesta alleges, Williams unreasonably abused the discretion afforded by § 25.4 of the Tariff General Conditions and violated both its Tariff and Section 5 of the NGA.

Vesta asserts that Williams' action in early February 1989 penalized Vesta for taking too much product out of the Williams system. Williams notified Vesta that its system was potentially at or near curtailment for the period February 3 through 8, 1989. After conclusion of the alleged curtailment period of Williams charged Vesta an overrun penalty of almost $830,000 collectively under two of Vesta's contracts, and an additional $49,000 under a third contract, despite (1) Williams' own failure to comply with the obligation set forth in section 7 of Article 13 of the Tariff General Conditions to provide 48 hours notice of overruns, and (2) Tariff language that precluded such a charge unless unauthorized overruns continued following such a notice. Vesta argues that Williams' assessment of the penalties constitutes a violation of its Tariff and unjust and unreasonable practice in violation of sections 4 and 5 of the NGA.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filling are on file with the Commission and are available for public inspection. Answers to this compliant shall be due on or before June 12, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11942 Filed 5-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-103-003]

Algonquin Gas Transmission Co.; Compliance Filing

May 12, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on May 8, 1989, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Proposed to be Effective November 1, 1988

Substitute Second Revised Sheet No. 372
Substitute Fifth Revised Sheet No. 375
Substitute First Revised Sheet No. 376

Algonquin states that on March 9, 1989 in Docket No. RP89-103-000, Algonquin filed to revise its Rate Schedule F-3 language to track changes made by its pipeline supplier, National Fuel Gas Supply Corporation ("National") in the service underlying Algonquin's Rate Schedule F-3.

Algonquin further states that such filing was accepted by Commission Letter Order issued April 7, 1989, subject to Algonquin making a compliance filing to implement certain changes, as set forth in the Letter Order, within 30 days of the issuance of such Letter Order.

Algonquin states that the instant filing implements such changes and is in compliance with the Commission's Letter Order of April 7, 1989.

Algonquin notes that copies of this filing were served upon each affected party and interested state commission.

Any person desiring to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such 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 protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion of intervention in this matter. Copies of this filing are on file with the Commission and are available for public inspection in this Public Reference Room

Lois D. Cashell,

Secretary.

[FR Doc. 89-11935 Filed 5-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA89-1-31-001 RP89-62-001]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment and Take-Or-Pay Recovery

May 12, 1989.

Take notice that on May 8, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing certain tariff sheets in compliance with the Commission's March 31, 1989 order herein.

AER states that its revised tariff sheets reflect the interim settlement rates filed February 17, 1989 by AER to be effective September 1, 1988 in Docket No. RP88-45-000.

AER also states that its revised tariff sheets reflect changes in AER's Volume 1 and Volume 3 PGA clauses caused by the new rate structure created by its interim rate settlement for AER's Rate Schedule Nos. G–2, CD and X–26.

AER states that the changes made to its Rate Schedule X–26 also provide for direct billing to Williams Natural Gas Company of accrued costs actually paid subsequent to June 1988 that were eliminated from AER's PGA prior to June 1988, as authorized by the March 31, 1989 order.

Finally, AER states that its tariff sheets reflect the allocation factor change that was approved in AER's Docket No. RP88–248–000 which reduces Williams' allocated share of costs in Docket No. RP89–62–000 from $6,049 to $6,034.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–11936 Filed 5–17–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–95–004]

Canyon Creek Compression Co.; Proposed Changes in FERC Gas Tariff

May 11, 1989.

Take notice that Canyon Creek Compression Company (Canyon) on May 8, 1989, filed the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 to become effective June 1, 1989:

—First Revised Sheet Nos. 1–2
—Eighth Revised Sheet No. 4
—First Revised Sheet Nos. 5–8
—Reserved for Future Use Sheet Nos. 11–100

Canyon states that the filing is intended to comply with the terms of the Stipulation and Agreement filed December 20, 1988 and approved by the Commission's Order dated March 24, 1989.

A copy of this filing was mailed to Canyon's customers, interested state commissions and all parties set out on the official service list at Docket No. RP88–95–000.

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 requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests must be filed on or before May 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–11894 Filed 5–17–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–2–32–002]

Colorado Interstate Gas Co. Filing

Take notice that on May 3, 1989, Colorado Interstate Gas Company (CIG) filed Fifth Revised Sheet No. 59, Substitute Fourth Revised Sheet No. 61A, Substitute Third Revised Sheet No. 61B, and Substitute Third Revised Sheet No. 61C to its FERC Gas Tariff, Original Volume No. 1, to be effective March 1, 1989.

CIG states that these tariff sheets reflect certain minor revisions to the PGA clause in its Original Volume No. 1 FERC Gas Tariff.

CIG requests waivers the Commission may deem necessary to allow the proposed tariff sheets to become effective on March 1, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such 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 protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–11937 Filed 5–17–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10535–001 Minnesota]

Genoa 8 Hydro Inc.; Surrender of Preliminary Permit

May 12, 1989.

Take notice that Genoa 8 Hydro Inc., permittee for the Lock and Dam No. 8 Project, located on the Mississippi River in Houston County, Minnesota, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 27, 1988, and would have expired on May 31, 1991. The permittee has decided that the project is not feasible due to unfavorable economics and potential adverse environmental impacts.

The permittee filed the request on April 13, 1989, and the preliminary permit for Project No. 10535 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89–11893 Filed 5–17–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–49–000]

National Fuel Gas Supply Corp., Informal Settlement Conference

May 12, 1989.

Take notice that on May 23, 1989 at 10:00 a.m., an informal settlement conference will be convened for the purpose of exploring a possible settlement in the above proceeding.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Participants as defined by 18 CFR 385.102(b), are invited to attend. For

further information, contact Russell Mamone, (202) 357–5744.

Lois D. Cashell,

Secretary.

[FR doc. 89–11892 Filed 5–17–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP–89–166–000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 11, 1989.

Take notice that on May 8, 1989, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Sixth Revised Sheet No. 157
Fourth Revised Sheet No. 158

Northern Border states that these tariff sheets reflects a revised Maximum Rate and Minimum Revenue Credit under Rate Schedule IT–1. Northern Border proposes to raise the Maximum Rate under Rate Schedule IT–1 from 6.787 cents per 100 Dekatherm-Miles to 7.513 cents per 100 Dekatherm-Miles. The revised Maximum Rate for the July-December 1989 time period reflects the impact of Northern Border's 1988 rate case, at Docket No. RP88–33–000. The changes in Docket No. CP88–33 will be effective June 1, 1989, and will be subject to refund from that date. The Minimum Revenue Credit is being decreased from 3.942 cents per 100 Dekatherm-Miles to 3.854 cents per 100 Dekatherm-Miles. Northern Border has requested that these revised tariff sheets be effective on July 1, 1989. Copies of this filing have been sent to all of Northern Border's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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, 385.214). All such motions or protests should be filed on or before May 18, 1989. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 89–11895 Filed 5–17–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88–227–014 and RP88–227–015]

Paiute Pipeline Co.; Compliance Filing

May 12, 1989.

Take notice that on May 4, 1989, in Docket No. RP88–227–014, and as amended on May 10, 1989, in Docket No. RP88–227–015, Paiute Pipeline Company (Paiute) tendered for filing and acceptance certain tariff sheets to be a part of its FERC Gas Tariff.

Paiute states that the purpose of its filing is to comply with the Commission's orders issued in Docket No. RP88–227 on August 31, 1988, January 31, 1989, and May 3, 1989, and to request authority to place into effect its suspended rates and tariff sheets in this general rate proceeding. Paiute asserts that the D-1, D-2, and commodity cost components of the rates set forth in the proposed tariff sheets reflect costs that have been allocated in the same manner as in Paiute's orginal rate filing in this proceeding, with the exception that Paiute has utilized its customers' most recent nominations of D-2 quantities in lieu of the D-2 quantities reflected in Paiute's orginal filing. Paiute also states that the proposed rates reflect the same seasonal rate design as proposed by Paiute in its original filing. Paiute further states that it has revised its originally filed rates in this proceeding to eliminate the costs of certain facilities which were certificated but not in service by February 1, 1989, and certain other facilities which were not in service by December 31, 1988.

In addition, Paiute indicates that certain of the tendered tariff sheets are being filed to eliminate from its tariff all references to summer daily and peaking seasonal entitlements, including related overrun penalties, in accordance with the Commission's May 3, 1989 order. Certain other tariff sheets are being submitted, according to Paiute, in response to the Commission's action in such a order reinstating certain previously rejected tariff sheets and authorizing the refiling of other previously rejected sheets.

Paiute proposes an effective date of Feburary 1, 1989 for all of the above tariff sheets, and requests waiver of any applicable rules and regulations as may be necessary so as to implement the subject tariff sheets and proposed rates effective on such date.

Furthermore, Paiute tendered for filing and acceptance Eighth Revised Sheet No. 10 to be part of Original Volume No. 1 of its FERC Gas Tariff, effective May 1, 1989, Paiute explains that certain of the above tariff sheets provide for revisions to Paiute's purchased gas cost adjustment (PGA) clause, including a new methodology for allocating Paiute's purchased gas demand charges. Paiute asserts that it did not utilize such new methodology in determining its rates in its most recent quarterly PGA filing in Docket No. TQ89–2–41–000, which was accepted to be effective May 1, 1989. Accordingly, in order to conform such quarterly PGA change with the revisions to its PGA clause, Paiute has submitted Eighth Revised Sheet No. 10 along with supporting schedules showing the reallocation of its purchased gas demand charges.

In its filing, Paiute also tendered for filing and acceptance Fifth Revised Sheet No. 10 to be a part of Original Volume No. 1-A of its FERC Gas Tariff. Paiute indicates that certain components of the firm transportation rates set forth on such tariff sheet exceed the corresponding components of the rates originally proposed in this proceeding, as a result of Paiute's incorporating customer-nominated D-2 quantities into the rate derivation. Paiute requests that such tariff sheet be made effective prospectively from May 4, 1989, the date of the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 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 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. 89–11941 Filed 5–17–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89–3–38–001]

Ringwood Gathering Co.; Filing

May 11, 1989.

Take notice that on May 4, 1989, Ringwood Gathering Company filed Second Substitute Forty-Ninth Revised Sheet Quarterly PGA–1 to its FERC Gas Tariff, to be effective April 1, 1989.

Ringwood states that this tariff sheet corrects the average cost of gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before May 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11896 Filed 5-17-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3572-8]

Extension of Time; Initial 404(c) Consultation for Proposed Two Forks Dam and Reservoir

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an extension of time.

SUMMARY: On March 5 of 1986, an application for a Clean Water Act section 404, 33 U.S.C. section 1334, permit was submitted to the U.S. Army Corps of Engineers, Omaha District (Corps) for construction of the Two Forks Dam and Reservoir near Denver, Colorado. On March 24, 1989, EPA's Denver Regional Administrator initiated an action under regulations for Clean Water Act section 404(c), (40 CFR 231.3(a)(1)) which may lead to the prohibition or restriction of the discharge site for the proposed dam. EPA has notified the Corps, the permit applicant and affected landowners of this action and has provided the opportunity for them to consult with EPA regarding possible adverse environmental effects of the project. As provided in the regulations for section 404(c), the close of EPA's consultation process was originally established as April 28, 1989. After meeting with the permit applicant and other affected parties the Regional Decision Officer, acting as the Regional Administrator in this action determined that good cause exists for extending the timeframe for consultation to July 14, 1989. This action is taken with the knowledge of and at the request of the permit applicant.

FOR FURTHER INFORMATION CONTACT: Gene Reetz, Two Forks Technical Team Leader, or Pat Courtney, Records Clerk, State Programs Management Branch, Water Management Division, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1570, (FTS) 564-1570.

Lee A. DeHihns,

Regional Decision Officer, EPA Region VIII.

[FR Doc. 89-11884 Filed 5-17-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3572-2]

Draft General NPDES Permit for Seafood Processors in the State of Alaska; Proposed Reissuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the draft NPDES permit for Alaskan Seafood Processors (No. AK-G-52-0000); Proposed reissuance.

SUMMARY: The Regional Administrator of Region 10 is today providing notice of the draft general National Pollutant Discharge Elimination System (NPDES) permit for seafood processors in Alaska (proposed reissuance). The draft general permit proposes effluent limitations, monitoring requirements, and reporting requirements for discharges from Alaskan seafood processors. This permit will cover mobile and shore-based seafood processing facilities in all waters under U.S. jurisdiction off the coast of Alaska, other than those waters listed as excluded areas.

DATES: Interested persons may submit comments on the draft general permit and administrative record to the Regional Administrator, Region 10, at the Seattle address below no later than June 19, 1989.

ADDRESS: The draft general permit is based on the administrative record, which is available for public review in three locations:

Environmental Protection Agency, Water Permits and Compliance Branch, WD-134, 1200 Sixth Avenue, Seattle, Washington 98101

Environmental Protection Agency, Alaska Operations Office, Federal Building, Room E551, Box 19, 701 C Street, Anchorage, Alaska 99513

Environmental Protection Agency, Alaska Operations Office, 3200 Hospital Drive, Suite 101, Juneau, Alaska, 99801.

FOR FURTHER INFORMATION CONTACT: For further information and copies of the draft permit and fact sheet contact Ben Cope, Region 10, at the Seattle address above or by telephone at (206) 442-1442 or FTS 399-1442.

SUPPLEMENTARY INFORMATION:

A. Background

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with an NPDES permit. EPA's regulations authorize the issuance of general permits to categories of discharges when a number of point sources are:

1. Located within the same geographic area and warrant similar pollution control measures;
2. Involve the same or substantially similar types of operations;
3. Discharge the same types of wastes;
4. Require the same effluent limitations or operating conditions;
5. Require the same or similar monitoring requirements; and
6. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

Like individual permits, a violation of a condition contained in a general permit constitutes a violation of the Clean Water Act and subjects the owner or operator of the permitted facility to the penalties specified in section 309 of the Act.

Owners or operators authorized by a general permit may request to be excluded from coverage by this general permit by applying to the Director for an individual permit. This request must be made by submitting an NPDES permit application, together with supporting documentation for the request no later than 90 days after publication by EPA of the final general permit in the **Federal Register**, or 180 days prior to the commencement of operation of a new source or new discharger.

B. Seafood Processors in Alaska

As of January 1989, the existing seafood general permit has covered 243 seafood processors (165 are mobile and 78 are shore-based). The draft permit proposed for reissuance is to expand coverage to include many more processors throughout Alaska. EPA now proposes to cover an estimated additional 150 of those currently not covered under any NPDES permit. These 150 facilities are small, mobile processing vessels that discharge more than ½ mile from shore in open water, at a depth of at least 42 feet. These facilities were excluded from coverage under the the existing general permit. They were consequently required to

apply for an individual NPDES permit. In order to reduce the regulatory burden on these facilities, EPA proposes to cover them under the reissued permit. This will increase total coverage statewide under the general permit to about 400 facilities.

The following areas are excluded from coverage under the proposed reissued general permit:

1. Akutan: Akutan Harbor, if the amount of waste exceeds 310,000 pounds per month.

2. Kodiak: Gibson Cove, Near Island Channel, St. Paul Harbor, and Women's Bay.

3. Unalaska/Dutch Harbor:

Iliuliuk Bay, Iliuliuk Harbor, Dutch Harbor, and Captain's Bay.

Unalaska Bay, south of the northermost point of Hog Island.

4. Discharges in the following areas:

a. Areas where water depth is less than 42 feet which are likely to have poor flushing (bays, harbors, inlets, coves, and lagoons that are protected).

b. Areas of special concern (spawning areas, State Critical Habitats and Refuges, National Wildlife Refuges, and the seaward boundaries of Wilderness Refuges, National Parks and Monuments, and wilderness classified lands).

5. Discharges to fresh waters in the vicinity of drinking water sources.

C. Effluent Limitations

1. Size of Waste Particles

In compliance with BCT for remote Alaska processors, seafood wastes may be discharged only if they do not exceed 0.5 inch in any dimension.

2. Discharge Depth

The permit specifies that process wastes shall be discharged through an outfall located beneath the mean lower low water (MLLW) level of the receiving water surface at a point which provides maximum dispersion of the wastes. The discharged depth for shore-based processing facilities must be at least 10 feet, into a total depth to the bottom substrate of 20 feet at MLLW. On a case by case basis, EPA may grant waiver of the depth requirement, provided adequate justification for the waiver is submitted by the permittee in the Notice of Intent to be Covered.

3. Treatment of Sanitary Wastes

The permit requires that all sanitary wastes generated at a facility be:

a. Discharged to a septic system or a municipal treatment works, or

b. Treated prior to discharge by an approved marine sanitation device that complies with pollution control standards and regulations under section 312 of the Act, or

c. Treated to meet the secondary treatment effluent limitations.

4. Prohibition of the Discharge of Garbage

This permit prohibits the discharge of garbage (especially plastics) from seafood processing facilities.

5. Prohibition of Discharges from Docked Vessels

This general permit prohibits the discharge of pollutants from vessels docked at or otherwise tied up to the permittee's facility.

6. State of Alaska Water Quality Standards

Based on the State of Alaska Water Quality Standards, there shall be no discharge of floating solids, grease, oily water or wastes that produce a sheen on the surface of the receiving water, or foam that persists at or near the shoreline and/or impacts nearby shoreline activities. In addition, no wastes shall be allowed to accumulate on the shore.

D. Monitoring Requirements

1. Dive Surveys

Most facilities covered by this permit will be required to conduct two dive surveys in the first year of coverage. Dive surveys are required in order to document any negative impacts resulting from the discharge of seafood wastes.

If dive surveys indicate the presence of a year-round waste pile accumulation, a request for a state-designated zone of deposit shall be submitted within 30 days of the second dive survey.

Facilities discharging to the following receiving waters will be required to conduct two dive surveys per year, based on the higher concentration of large facilities in these areas: Unalaska Bay, Akutan Harbor, Wrangell Narrows, and Orca Inlet.

2. Other Monitoring Requirements

Facilities that are exempt from the dive survey requirement (due to a prohibitive depth of the outfall or hazardous diving conditions) are required to conduct bottom samples to document any waste pile accumulations. Facilities are required to conduct bottom samples twice in the first year of coverage. Facilities on the Kenai River, Kasilof River, and fresh waters are required to conduct annual bottom samples.

Annual dye testing of the wastehandling system is required for facilities that do not have annual dive requirements to insure proper operation of the outfall as well as the collection system over the life of the permit.

The permit requires effluent sampling for total residual chlorine to assess potential impacts to the receiving water. Most facilities chlorinate intake water prior to processing for disinfection purposes.

E. Reporting Requirements

The permittees will be required to submit to EPA and ADEC the following:

1. Notice of Intent to be Covered

Existing facilities covered under this general permit must notify the Director of their intent to be covered no later than 30 days after permit reissuance. For new dischargers, the intent must be submitted 30 days prior to commencement of operations.

The Notice of Intent to be Covered must include the following information:

a. NPDES permit number previously assigned State seafood processors permit number.

b. Owner: name, address, phone number.

c. Operator: name, address, phone number.

d. Facility: name, address, location, vessel registration number, previous facility and/or vessel name, date of purchase/transfer, number of employees.

e. Treatment: method of treating seafood and sanitary wastes, method of garbage/plastics disposal, depth of discharge below the water surface, total water column depth at the discharge location, water use diagram (estimates of flows used in seafood processing, sanitary systems, freezing, etc.)

f. Receiving Water(s): name of receiving water(s), bathymetric map of receiving water showing the outfall location (shore-based and near-shore facilities only).

g. Production Data: (for each type of raw product processed), Name of raw product, Type of finished product, Maximum quantity processed per day, Projected dates of each operating season, Projected number of processing days per season.

Submittal (to EPA) of the State of Alaska Department of Environmental Conservation Annual Uniform Permit Application for Seafood Processors, if it includes all of the information above, will also satisfy this requirement.

2. Annual Report

The Annual Report shall be submitted by the end of the processing season or by January 31 of each year, whichever is sooner, and shall include the following:

a. Dive or Bottom Sampling Reports.

b. Residual Chlorine Monitoring Results.

c. Dye Test Results.

d. Production Data for the previous year (a copy of the daily records will suffice) including, for each location: Dates of operations at each location, production data (raw and finished product for each type of product), and a map showing the bathymetry at each location (when locations are within ½ mile of shore or in less than 90 feet of total water depth).

e. Updated Notice of Intent to be Covered. Any changes to the information submitted in the original Notice of Intent to be Covered.

f. Special Reporting Requirements in Areas of Concern: Facilities discharging to Unalaska Bay, Akutan Harbor, Wrangell Narrows, and Orca Inlet shall submit monthly Discharge Monitoring Reports (DMRs).

F. Other Legal Requirements

1. National Environmental Policy Act (NEPA)

Pursuant to section 301 of the Clean Water Act, new source performance standards were pomulgated by EPA in 1975 for categories of discharges covered under this permit. In accordance with section 511(c)(1) of the Act, NPDES permits for new sources are subject to the provisions of the National Environmental Policy Act (NEPA). An assessment of potentially significant impacts on the quality of the human environment resulting from operation of the new source is required under NEPA.

Prior to the issuance of the existing general permit. EPA conducted an environmental assessment to determine if the environmental impacts associated with the discharges from new sources operating under the permit would be significant. On December 1, 1983, EPA determined that the environmental impacts would not be significant and issued a Finding of No Significant Impact (FONSI). Because the proposed general permit will also allow coverage to new source seafood processors, EPA has reexamined the environmental assessment in relation to the conditions of the proposed general permit.

Because there have been no significant changes in the fundamental factors affecting the facilities covered by the general permit and the waters it is designed to protect, EPA has determined that the permit will not cause any significant environmental impacts. Although the proposed permit covers more Alaskan waters than the existing permit, additional monitoring requirements in areas of concern have been incorporated into the proposed permit (such as more frequent dive surveys in Orca Inlet). These requirements are derived from current individual permitting policies in these areas.

The reissued permit continues to allow EPA to issue individual permits to facilities if water quality is not adequately protected under the general permit. Individual environmental assessments will be prepared for new sources not covered under this proposed general permit.

Based on the above factors, EPA has determined that the environmental assessment and Finding of No Significant Impact prepared for the existing permit are still valid for the purposes of this permit reissuance.

2. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities by this proposed general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the Clean Water Act.

3. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

4. Regulatory Flexibilty Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provisions of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: May 10, 1989.

Robie G. Russell,

Regional Administrator, Region 10.

[FR Doc. 89-11821 Filed 5-17-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Thrice-Monthly Survey of Liabilities of FSLIC-Insured Thrifts

Date: May 11, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a request for a new information collection survey entitled "Thrice-Monthly Survey of Liabilities of FSLIC-Insured Thrifts", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The information collected from the survey will enable the Bank Board to better meet the cash needs of thrifts from funds raised in financial markets by the twelve Federal Home Loan Banks. We estimate it will take approximately .25 hours per response to complete the information collection.

DATES: Comments on the information collection request are welcome and should be received on or before June 2, 1989.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202-416-2751.

FOR FURTHER INFORMATION CONTACT: Richard C. Pickering, Deputy Director, Office of Policy & Economic Research, (202) 906-6770, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-11878 Filed 5-17-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of

the Shipping Act, 1916, and 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 protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–011088–002.

Title: Los Angeles Terminal Agreement.

Parties: City of Los Angeles (City) Matson Terminals, Inc. (Tenant)

Filing Party: Jonathon P. Nave, Deputy City Attorney, City of Los Angeles, 425 S. Palos Verdes St., P.O. Box 151, San Pedro, CA 90733–0151.

Synopsis: The Agreement establishes a contractual basis for the pilotage provision of the City's Tariff and clarifies the application of those provisions to the operation of the Tenant.

Agreement No.: 224–200244.

Title: Port Manatee Terminal Agreement.

Parties: Manatee County Port Authority (Authority), Del Monte Tropical Fruit Company, North America (Del Monte).

Filing Party: E.N. Fay, Jr., Attorney at Law, 6404 Manatee Avenue West, Suite G, Bradenton, FL 34209.

Synopsis: The Agreement provides for the lease of vacant land at Port Manatee in anticipation of the construction of transit warehouse facilities thereon to be owned by Authority and operated by Del Monte. The agreement provides Del Monte with the use of berths, docks, wharfs and open storage space for the transmission, care and convenience of cargo. The Agreement's term is for five years and may be extended for two additional 5 year periods.

Agreement No.: 224–200245.

Title: Seattle Terminal Lease Agreement.

Parties: Port of Seattle (Port), British Columbia Stena Line, Ltd. (Tenant).

Filing Party: Keith Christian, Manager, Marine Real Estate, Port of Seattle, P.O. Box 1209, Seattle, WA 98111.

Synopsis: The Agreement provides that the Port has agreed to lease to Tenant the properties, known as Pier 48 in King County, Washington. Tenant shall use the premises for the operation of a passenger marine terminal facility.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 12, 1989.

[FR Doc. 89–11912 Filed 5–17–89; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after 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.

Title: Virginia International Terminals Terminal Agreement

Parties: Virginia International Terminals, Inc. Thames Shipping, Ltd. (Thames)

Synopsis: The Agreement provides Thames with the non-exclusive use of marine terminal facilities at Newport News Marine Terminals. It provides Thames with incentive rates for wharfage, transtainer rental and portainer rental, in return for a guarantee for the annual movement of a minimum 25,000 tons of cargo. The Agreement's term is for one year.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 15, 1989.

[FR Doc. 89–11950 Filed 5–17–89; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 89–07]

Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of further comments.

SUMMARY: The Federal Maritime Commission is providing interested parties an opportunity to submit additional comments on the status and operations of Overseas Enterprises, Inc., as well as on shipping conditions in the U.S./Ecuador trade. These comments will assist the Commission in determining whether issuance of a countervailing rule pursuant to section 19(l) (b) of the Merchant Marine Act, 1920, is warranted.

DATE: Comments due on or before June 7, 1989.

ADDRESS: Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

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

SUPPLEMENTARY INFORMATION: On March 15, 1989 (54 FR 10,721), the Federal Maritime Commission ("Commission" or "FMC") issued a Notice of Inquiry ("March Notice") into laws, regulations and policies of the Government of Ecuador ("GOE") affecting shipping in the United States/Ecuador trade ("Trade") to determine whether action pursuant to section 19(l)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(l)(b) ("Section 19") is warranted. The Commission instituted this inquiry as a result of allegations made by Overseas Enterprises, Inc. ("OEI"), a U.S.-owned company, that it has been unable to reestablish a liquid bulk service in the Trade due to GOE cargo reservation laws which require OEI to employ U.S.-flag vessels in such a service. In addition, the Commission requested information from the U.S. Department of State ("DOS") about its efforts to resolve the situation through diplomatic channels.

In February 1989, DOS advised that it has raised the issue of OEI a number of times with GOE authorities. DOS reported, however, that no resolution to the OEI situation has been reached and that its efforts continue.

Further, DOS indicated that OEI ceased operations in the Trade in 1983

when GOE laws allegedly made OEI participation impossible. GOE Resolution No. 20/83 of 1983 reserved 50 percent of Ecuadorian imports of solid and liquid bulk cargo for Ecuadorian-flag vessels or foreign-flag vessels chartered by Ecuadorian shipping companies, and 50 percent for vessels flying the flag of the country of origin of the cargo. GOE Resolution No. 012/87 of March 1987, which supersedes the 1983 resolution, reserves solid and liquid bulk import cargo from the United States to Ecuador for Ecuadorian-flag vessels belonging to Ecuadorian shipping companies, or foreign vessels chartered by Ecuadorian shipping companies, or vessels flying the flag of the United States. The stated rationale in Resolution No. 012/87 for narrowing the application of the cargo reservation law solely to the trade between the United States and Ecuador is that 88 percent of Ecuador's imported bulk cargo originates "in the Gulf of the United States."

DOS and OEI communications indicated that OEI was informed by the GOE's Director General of the Merchant Marine ("DIGMER") that it could not operate a liquid bulk service in the U.S. Gulf to Ecuador trade unless it operates U.S.-flag vessels. OEI advised, however, that the U.S. merchant marine does not have any vessels of the size and capabilities necessary to offer such a service in the Trade. OEI alleged, therefore, that the GOE has created a situation wherein an Ecuadorian-flag carrier, Maritima Transligra, S.A. ("Transligra"), has been given a monopoly position in the liquid bulk trade. Further, OEI contends that GOE cargo reservation laws create conditions unfavorable to shipping in the Trade.

The Commission stated in its March Notice that OEI's allegations raise possible issues under section 19. In order to determine whether action pursuant to section 19 is warranted, the Commission requested interested parties to comment on the current status and effects of GOE laws, rules and policies on the operations of carriers currently operating or proposing to operate in the Trade and on the ability of shippers to employ their preferred carriers. The Commission also requested that DOS report to it regarding ongoing diplomatic efforts to resolve the situation. The Commission received comments from Transligra, OEI, Pecten Chemicals ("Pecten"), Trans Marketing Houston, Inc. ("Trans Marketing"), Shippers for Competitive Ocean Transportation ("SCOT"), Joint Maritime Congress ("JMC"), DOS, and GOE.

Summary of Comments

Transligra submitted a Petition to Dismiss the Proceedings ("Petition"). The Petition alleges that the Commission's jurisdiction under Section 19 is limited to protection of U.S.-flag carriers only. Transligra maintains that OEI neither owns nor operates U.S.-flag vessels and that the FMC, therefore, lacks the statutory authority under Section 19 to act on behalf of OEI. In addition, Transligra suggests that OEI operates no vessels, but only functions as agent for foreign companies operating foreign-flag vessels.[1] Transligra asserts that the Commission has no authority under section 19 to take action against GOE cargo preference laws or Ecuadorian-flag carriers in order to protect noncarrier interests.

OEI characterizes itself as "an agent for a number of companies, *e.g.*, O.N.E. Shipping Ltd.," which provides ocean transportation to importers and exporters of liquid bulk cargo in the U.S./Caribbean-Latin America trades. OEI advises that its service to Ecuador was cancelled in 1983 due to GOE cargo reservation laws. OEI also provides documentation of its requests dating back to October 1987, to obtain traffic rights from DIGMER. DIGMER is said to have denied these requests, but further advised that OEI could serve the U.S. to Ecuador trade if the transportation service is always done on U.S.-flag vessels.

OEI points out that the GOE liquid bulk cargo reservation law applies only in the U.S./Ecuador trade and that it allows Ecuadorian companies to charter foreign-flag vessels to transport liquid bulk cargo, but does not allow U.S. companies to do so. OEI asserts that, as a result, Transligra essentially controls the entire U.S. liquid bulk export trade to Ecuador, and that Transligra moves a majority of this cargo on third-flag vessels. Further, OEI reports that, according to some of its clients, the alleged monopoly situation has resulted in unreliable service and market rates above market level. In conclusion, OEI seeks Commission adoption of countervailing action due to the restrictions imposed by the GOE.

Pecten, an international distributor for Shell Chemical Company, advises that it exports two shipments a month to Ecuador on Transligra, which Pecten characterizes as the only shipping line authorized by Ecuadorian authorities to transport liquid bulk cargoes. Pecten asserts that Transligra's service is adequate, but that the rates are high in comparison to other trades where competition exists. Pecten encourages the Commission to issue a countervailing rule pursuant to Section 19 because the GOE has denied permission for other lines to enter the Trade.

Trans Marketing, an exporter, advises that its past experince with OEI has been quite satisfactory. Trans Marketing states that should OEI be barred from reentering the Trade, an important carrier which would help restore an open and competitive market would be lost.

SCOT,[2] which represents major U.S. exporters and importers and six major associations of shippers active in U.S. maritime trades, states that because GOE Resolution No. 012/87 reserves solid and liquid bulk imports from the U.S. to Ecuador for Ecuadorian shipping companies, foreign-flag vessels chartered by Ecuadorian companies, or U.S.-flag vessels, but does not place similar restrictions on the exports of any other cuntry, it forces U.S. exporters to deal with an Ecuadorian monoply, while exporters of other nations are free to use third-flag vessels.[3] SCOT contends that restriction of the shippers' right to choose their preferred carrier has adverse economic, safety, environmental and quality implications for liquid bulk exporters. It takes the position that control of access by waivers is not acceptable.

JMC, a research and education organization representing U.S.-flag ship companies, disputes OEI's claim that the U.S. merchant marine does not have any chemical tanker vessels capable of operating in the Trade. Further, JMC argues that one of the primary goals of the FMC is to protect the interests of U.S.-flag vessels and that, therefore, it makes little sense for the Commission to find fault with GOE cargo reservation policies which are favorable to such vessels.

DOS reports that it has advised the GOE Foreign Ministry of the Commission's March Notice and that the U.S. Ambassador to Ecuador discussed

[1] Attached to Transligra's Petition is a tanker voyage charter agreement wherein Sunrise Shipping Ltd., whose agent was OEI, chartered a vessel from Transligra in November 1988. The point of loading was New Orleans and discharge was Veracruz, Mexico.

[2] Attached to SCOT's comments is a portion of a study done by the Government of Canada, which summarizes GOE cargo reservations laws. SCOT states that, while the findings by the Government of Canada do not report on developments since 1985, they are relevant in that they support allegations made by OEI regarding conditions in the Trade.

[3] SCOT cites the high cost of U.S.-flag bulk operations as a major factor contributing to the Ecuadorian monopoly in the U.S./Ecuador liquid bulk trade.

the case personally with the Foreign Minister. In addition, DOS transmitted a letter from the GOE, dated April 7, 1989, regarding GOE cargo reservation laws and policies. DOS advises that, in its letter, the GOE summarizes the applicable Ecuadorian regulations and defends their rationale. Further, DOS advises that the GOE does not offer any indication that it is contemplating initiatives to allow OEI to enter the Trade.[4] DOS states that it will continue to seek a resolution to the situation and will advise the Commission of any futher progress.

The GOE letter of April 7, 1989, to the U.S. Embassy in Quito, reports that the GOE has denied OEI's applications for reentry on legal grounds. The GOE asserts that the application of its cargo reservation laws is not an attempt to impose restrictions on U.S. maritime transport. The GOE maintains that, on the contrary, U.S.-flag vessels are permitted to carry 50 percent of the liquid bulk cargo. Moreover, the GOE identifies trades wherein the GOPE reserves for "itself" 100 percent of the cargo generated in those countires destined for Ecuador.

The GOE advises that the requirement that U.S.-flag vessels be used is logical because Ecuadorian firms are required to have at least one Ecuadorian-flag vessel in order to have the right to charter other vessels dedicated to the same traffic. The GOE believes that the FMC has authority only to protect the interests of U.S.-flag ships under the Merchant Marine Act.

The GOE explains that the fact that Transligra is the principal carrier in the Trade is not a monopoly situation, but rather a situation that has arisen from an insufficient market for liquid bulk services. With regard to the operations of Transligra, the GOE reports that it has had the occasion to adjust or lower freight rates of Transligra when Transligra's clients have requested the GOE to do so. Further, the GOE reports that it has imposed severe fines on importers which have violated the cargo reservation law.

Discussion

GOE Resolution No. 012/87, on its face, appears to create conditions unfavorable to shipping in the Trade. To the extent the Resolution applies only to the U.S./Ecuador bulk trade, leaving most other Ecuadorian bulk trades open to third-flag carriers, that Resolution is discriminatory.[5] Further, this Resolution allows Ecuadorian shipping companies to charter and employ foreign-flag vessels in the Trade, whereas U.S. shipping companies may employ only U.S.-flag vessels in the Trade.

The requirement noted in the GOE comments that an Ecuadorian shipping company must operate an Ecuadorian-flag vessel in the Trade before it can deploy chartered, foreign-flag vessels, does not make the situation between Ecuadorian and U.S. carriers any more equitable.[6] Even if, as the GOE represents, participation of U.S. companies which operate at least one U.S.-flag vessel is allowable,[7] troubling questions are raised as to whether Ecuadorian laws dictating the fleet mix and other registration requirements for U.S. or other non-Ecuadorian citizens' participation in U.S. trade create conditions unfavorable to shipping or are otherwise inappropriate.

Further, the exclusion of third-flag operators in the Trade pursuant to Resolution No. 012/87 alone may create conditions unfavorable to shipping in the Trade. The comments received thus far indicate some shipper support for OEI's allegation that GOE reservation laws create conditions unfavorable to shipping in the Trade. Pecten, for example, alleges that rates in the Trade are high due to lack of competition.

While GOE Resolution No. 012/87 is discriminatory on its face and appears to have deleterious effects on the Trade, we do not have sufficient information concerning the status and interests of the parties that are or could be affected by the Resolution. The solicitation of further comment is therefore appropriate and necessary.

Transligra suggests that OEI neither owns nor operates U.S.-flag vessels, and apparently "does not own or operate vessels of any flag in the trade." (Petition, 2.) Transligra notes that OEI has represented itself as an "agent" for several foreign companies which operate foreign-flag vessels in U.S. trades, *e.g.*, O.N.E. Shipping, Ltd. of Bermuda. Papers filed by or on behalf of OEI, on the other hand, indicate variously that OEI seeks to operate three vessels of foreign registry[8] in the U.S./Ecuador liquid parcel tanker trade and the OEI "as an agent for a number of companies * * * provides ocean transportation to the importers and exporters of liquid bulk cargo * * *" (OEI Comments, 1).

Thus, it is unclear to us whether OEI is a U.S. company which operates as a carrier, is solely an agent for non-U.S. companies which are carriers operating foreign-flag vessels, or has some other relationship to carriers operating third-flag vessels. If OEI is not itself an operator of vessels, or if the carrier interests OEI represents are not those of a U.S. company, then the basis for Commission concern might be the interests of U.S. shippers in access to service by the carriers represented by OEI or other operators of third-flag vessels. However, the specific harm occasioned U.S. shipper interests remains somewhat unclear, given the nature and extent of shipper participation in the proceeding thus far.

Because of these outstanding questions with respect to the existence of interests for whose protection Commission action under section 19 is being sought, the Commission wishes to secure further information before considering any formal section 19 action, including information as to OEI's status. Specifically, the Commission is interested in knowing whether OEI operates vessels on its own behalf or represents other operators of vessels, the registration of vessels owned or operated by OEI or such other companies, and whether OEI has a corporate relationship with any such companies (including O.N.E.).

In considering section 19 action, it is both necessary and appropriate for the Commission to understand what specific interests are at stake in order to determine not only whether such interests may be protected under section 19, but also what sanction would adequately adjust the detrimental impact of the GOE decrees. The Commission also seeks information from other interested parties, including shippers in the U.S./Ecuador trade, regarding the issues in this proceeding; generally whether conditions unfavorable to shipping in the Trade exist as a result of the decrees, policies and practices of the GOE; and whether

[4] The GOE letter is summarized more fully below.

[5] Exceptions to this may be the Ecuador/Brazil-Argentina trades wherein the GOE states in its April 7, 1989 letter to DOS, that 100 percent of the cargo generated by those two countries destined for Ecuador is reserved for "itself."

[6] This requirement placed on Ecuadorian carriers does not appear in Resolution No. 012/87.

[7] While it seems apparent from Resolution No. 012/87 and the GOE comments that a U.S. shipping company can operate only U.S.-flag vessels in the liquid bulk trade, the February 8, 1989 DOS letter reports that in a July 1988 communication, the GOE suggested that U.S. carriers could employ foreign-flag vessels if they employ at least one U.S.-flag carrier in the Trade.

[8] In its application to the GOE in December 1987, OEI represented that it had operated in various U.S./Central and South American trades in 1987 using four vessels full time and additional vessels chartered short term. OEI specifically described the fleet it planned to operate in the U.S./Ecuador trade, naming and giving particulars of two vessels of Panamanian registry and one of Japanese registry, which it said OEI "is operating" in addition to similar vessels operated on a voyage or short-term basis.

Commission action pursuant to section 19 is required.

One final procedural matter needs to be addressed. Transligra urges the Commission to rule on its Petition to Dismiss the Proceedings "as early as possible" and conclude that section 19 does not extend to the protection of any person not an operator or owner of U.S.-flag vessels (Petition, 11).[9] By so doing, the Petition in effect is requesting that the Commission depart from the procedural framework established in its rules and in the March Notice.

The Commission's procedures in section 19 cases are essentially the "notice and comment" procedures used in informal rulemakings under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* its rules generally governing proceedings under section 19 appear at 46 CFR Part 585. Those rules "establish procedures by which persons who are or can reasonably expect to be adversely affected by such conditions [unfavorable to shipping] may petition the Federal Maritime Commission for the issuance of regulations. * * * " The Commission may also institute a proceeding or make a finding of conditions unfavorable to shipping on its own motion.

The Commission's rules at 46 CFR 585.10 provide for the participation of interested persons, following publication of notice of that opportunity in the Federal Register through "the submission of written data, views or arguments* * *." [10] Nothing in the Commisson's rules or the statute obliges the Commission to entertain a petition for discontinuance or other procedural truncation in derogation of the notice and comment procedures established in the March Notice. To the contrary, the swift and timely reaction to the discriminatory acts of foreign governments which section 19 contemplates requires a good deal of discretion and flexibility in the Commission's management of actions under that Section.

The limits of the Commission's authority and jurisdiction are among the issues which any interested person may raise in any Commission proceeding. However, the appropriate way to raise these issues in a section 19 proceeding is through the filing of "comments, views and arguments." Through its Petition, as—well as a later-filed, two-page "comment" referencing the Petition, Transligra may be deemed to have commented. We will therefore treat the Petition as a comment, to be considered along with other comments filed in this proceeding.

Therefore, in order to assist the Commission in determining whether action pursuant to section 19 is warranted in this proceeding, OEI and other interested parties are requested to submit additional information, data and views within 20 days following publication of this notice in the Federal Register.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-11844 Filed 5-17-89; 8:45 am]

BILLING CODE 6730-01-M

[9] The Commission has considered and rejected this jurisdictional contention on a number of occasions in connection with other proceedings. However, we do not address the merits of Transligra's jurisdictional arguments in this Notice. We focus instead on the procedural issue raised by the filing of the Petition.

[10] Although § 585.13 refers to the postponement, discontinuance or suspension of Commisison actions on its own motion or "upon petition," the rule is permissive, *i.e.*, the Commission "may" discontinue its action. The rule, moreover, is intended to permit requests for deferral of Commission "action," i.e., issuance of a rule making findings of conditions unfavorable to shipping or establishing sanctions or both, rather than a means for parties to short circuit Commission procedures.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Senior Executive Service; Performance Review Board Members

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: The Federal Retirement Thrift Investment Board (FRTIB) is publishing the names of its Performance Review Board members. The purpose of this notice is to add the names of David L. Black and Veda R. Charrow to the original list of members that was published in the Federal Register on September 21, 1988.

The following FRTIB employees serve on the Performance Review Board:

David L. Black
Robert Bloom
Veda R. Charrow
Alisone M. Clarke
Peter B. Mackey
John J. O'Meara
James B. Petrick
Thomas J. Trabucco
Strat D. Valakis
John W. Witters

FOR FURTHER INFORMATION CONTACT: Leonard Sese, Personnel Officer, Federal Retirment Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC 20005 (202-523-8028).

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, United States Code, requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance and make a recommendation to the appointing authority relative to the performance of the senior executive.

Dated: May 12, 1989.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 89-11970 Filed 5-17-89; 8:45 am]

BILLING CODE 6760-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority; Region IX-San Francisco

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration, (HCFA), (Federal Register, Vol. 46, No. 223, pp. 56927-56929, dated Thursday, November 19, 1981; Vol. 48, No. 196, pp. 46446-46447, dated Wednesday, October 12, 1983; and Vol. 53, No. 195, pp. 39525-39526, dated Friday, October 7, 1988) is amended to reflect a reorganization within Region IX (San Francisco), Office of the Associate Administrator for Operations (AAO). The regional office is reorganizing from a functional structure to a programmatic structure with respect to the administration of the Medicare and Medicaid programs. The reorganization abolishes the current Division of Program Operations and Division of Financial Operations and replaces them with the Division of Medicare and the Division of Medicaid. Although this organizational change affects Region IX, all functional statements for the Office of the Regional Administrator (FPD(I-X)) are republished by this notice so that they will appear in the same location in the Federal Register.

The specific amendments to Part F. are described below:

- Section FP.10.D., Office of the Regional Administrator (FPD(I-X)) (Organization)

The Office of the Regional Administrator, under the leadership of the Regional Administrator, is comprised of the following organizational components:

1. Division of Health Standards and Quality (FPD(I-X)A)

2. Division of Financial Operations (FPD(II, V, VI, and X)C)
3. Division of Program Operations (FPD(II, V, VI, and X)D)
4. Division of Medicaid (FPD(I, III, IV, VII–IX)E)
5. Division of Medicare (FPD(I, III, IV, VII–IX)F)

• Section FP.20.D., Office of the Regional Administrator (FPD(I–X)) (Functions), is depleted in its entirety and replaced by a new set of functional statements. The new set of statements read as follows:

D. Office of the Regional Administrator (FPD(I–X))

The Office of the Regional Administrator is the principal official for regional operations of the Health Care Financing Administration (HCFA). Provides executive leadership and guidance on behalf of the Associate Administrator, Operations, HCFA, to all components at the regional level. Implements national policy at the regional level. Assures the effective administration of all HCFA programs including Medicare, Medicaid, peer review organizations (PROs), quality control, and certification of institutional providers in a major geographical area. Participates in the formulation of new policy and recommends changes in existing national policy for all HCFA programs. Develops and implements a professional relations program within the region for all HCFA programs and serves as the principal HCFA contact for all professional organizations such as hospital and medical associations. At the regional level, takes action to implement HCFA national initiatives undertaken to integrate HCFA program operations and is responsible for coordination of HCFA programs with other departmental components and Federal agencies. Coordinates with the Department's Principal Regional Official to assure effective relationships with State and local governments. Manages all administrative activities for HCFA components and coordinates such activities with the Regional Administrative Support Center. Initiates and directs the implementation of special regional and headquarters projects affecting all HCFA programs. Directs regional responsibilities relating to experimental and demonstration projects. Oversees a beneficiary services program within the region for all HCFA programs. Provides regional perspective to the Administrator, Associate Administrators, Bureau Directors, and Staff Office Directors in the development of HCFA policies, programs, and objectives.

1. Division of Health Standards and Quality (FPD(I–X)A)

Under the direction of the HCFA Regional Administrator, the Division of Health Standards and Quality assures that health care services provided under Medicare and Medicaid are furnished in the most effective and efficient manner consistent with recognized professional standards of care. Serves as the regional focus for assuring accountability to health care consumers for the quality of health care services. Participates in the formulation and development of health standards and quality policies and programs; interprets and implements health safety standards and evaluates their impact on the utilization and quality of health care services. Ensures appropriate review and application of conditions of participation for providers and suppliers of health services under Medicare and Medicaid and other related Federal programs. Exercises authority for approval, denial, and termination of all provider/supplier certification actions under the Medicare program. Makes final determination on all initial budget requests submitted by State survey agencies. Exercises authority on all fiscal matters relating to section 1864, Medicare State Survey Agency Agreements. Resolves conflicts involving the State survey agency and professional review and medical review organizations. Oversees, monitors and evaluates the Medicaid State agency, State survey agencies, and professional review and medical review organizations. Maintains liaison with organizations representing health care professionals, providers of health care services, and program beneficiaries. Participates in the conduct of national studies and conducts comprehensive regional reviews by selectively evaluating indicators of policy or operational weaknesses to provide information concerning the effectiveness and cost implications of HCFA policy and operational decisions. Coordinates State and contractor responsibilities and activities related to sanctions, civil money penalties, and other Office of the Inspector General (OIG) activities. Recommends corrective action within functional areas of responsibility including Federal/State statutory and regulatory changes to central office and States respectively. Interprets and implements policies and procedures for review and utilization control programs under the Social Security Act and other Federal programs. Oversees the negotiation and award of grants and the operation of local professional review and medical review organizations. Performs regional responsibilities relating to experimental and demonstration projects. Develops and implements a program of liaison with organizations representing health care professionals and providers of health care services and assumes responsibility for associated program training. Provides current feedback to central office on operations, activities, and problems. Provides regional perspective in the development of central office policies, objectives, and work plans. Monitors and assesses performance and provides technical assistance to end-stage renal disease (ESRD) networks by overseeing financial management and compliance with program policies and regulations and ensures coordination with States and local planning agencies and peer review organizations (PROs).

2. Division of Financial Operations (FPD (II, V, VI, and X) C)

Under the direction of the HCFA Regional Administrator, the Division of Financial Operations is responsible for financial management, institutional reimbursement, and automated data processing (ADP) systems of Medicare contractors and Medicaid State Agencies. Assures continuing surveillance and appraisal of Medicare contractors regarding the implementation of Medicare institutional reimbursement policy and procedures. Monitors contractor overpayment identifications and collection activities; prepares overpayment cases for submissions to the General Accounting Office (GAO) for collection and/or to the Department of Justice and possible litigation. Identifies problems and initiates action to ensure contractor adherence to national Medicare financial management policy and procedures. Directs Medicare regional financial management activities. Directs a program of in-depth surveys to evaluate the effectiveness of the Medicare program with respect to the division's areas of responsibility. Conducts Part A quality assurance program and on-site performance appraisals. Negotiates and approves contractor budgets, modifications to budget allotments, and final cost settlements. Coordinates day-to-day contractor financial management activities; reviews and evaluates the cost procedures of contractors. Plans, manages, and provides Federal leadership and assistance to Medicaid State agencies in implementation, maintenance, and regulatory review of Medicaid State agency activities with respect to institutional reimbursement, financial management, and ADP systems. Interprets Medicaid program

and financial policy with respect to institutional reimbursement, financial management, and ADP activities. With respect to areas of the division's responsibility, maintains day-to-day liaison with Medicaid State agencies and monitors their Medicaid program activities and practices by conducting periodic comprehensive on-site program management and financial reviews to assure State adherence to Federal law and regulations. Reviews, approves, and monitors Medicaid State agency institutional reimbursement plan. Reviews cost allocation plans, determines whether such plans are approvable from the Medicaid standpoint, and advises Regional Administrative Support Centers of such determinations. Reviews, analyzes, and approves Medicaid State agency expenditures for Medicaid contracts. Resolves audits with States. Reviews States' quarterly estimates of expenditures under the Medicaid program and recommends the estimated amount to be approved by HCFA in the quarterly grants. Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed. Defers reimbursement action on questionable claims, reviews the claims for allowability, and recommends appropriate action. Issues orders suspending Federal financial participation in State payments to ineligible Title XIX provider institutions and revokes such suspension orders. Advises, provides technical assistance, supports, and evaluates State management information and claims payment systems. Operates systematic Medicare and Medicaid quality control programs in a variety of areas, including Medicaid claims payment, Medicaid eligibility, third-party liability, Medicaid utilization control, and Medicare Part B end-of-line bill review. Makes recommendations to the Regional Administrator regarding financial penalties and final decisions regarding Federal/State quality control differences. Assists Medicaid State agencies and Medicare contractors in improving the management of federally required quality control programs. Recommends corrective action by contractors and State agencies. Provides for State and regional input to operational plans, policy, regulations, legislation, and budget formulation with respect to areas of responsibility. Provides current feedback to central office counterparts on operations, activities, and problems. Provides regional perspective in the development of central policy, objectives, and work plans related to areas of responsibility.

3. Division of Program Operations (FPD (II, V, VI, and X) D)

Under the direction of the HCFA Regional Administrator, the Division of Program Operations serves as a principal point of contact between the regional office and Medicare contractors and Medicaid State agencies within the region. Directs the conduct of liaison and working relationships with these organizations. Directs a program of surveillance and appraisal of Medicaid State agencies and Medicare contractors to ensure compliance with the Medicaid State plan and the Medicare contract (respectively). When deficiences are noted, ensures that corrective action is taken is appropriate. Through the review and approval of Medicaid State plan material, assures the appropriate use of funds under established policies and conformance with planned objectives of the program. Assures uniformity in plan changes among assigned States. Directs Title XVIII and Title XIX program coordination to achieve greater uniformity and consistency in assigned contractor and State agency practices and to eliminate unnecessary duplication of effort and cost between the two programs. Provides support to the Medicaid State agencies, Medicare contractors, and other HCFA components with respect to Medicare/Medicaid policy interpretation and specialized technical assistance. Serves as a State agency and contractor review and resource point for interpretation of Federal regulations, program objectives, and policies. Provides significant recommendations and contributions to national policy development and revision. Provides consultation and assistance to central office in the development of new and revised legislation, policy, regulations, and guidelines. Participates in the development of long and short range goals and objectives of the Agency as well as its policies and directives. Monitors and assesses the performance of Medicaid State agencies and Medicare contractors in the area of Medicaid and Medicare policy, procedures, and instructions. Makes recommendations where appropriate and ensures corrective action is taken when deficiencies are identified. Develops and implements a program of liaison with organizations representing program beneficiaries. Provides direction and guidance to State agencies and Medicare contractors concerning services to beneficiaries. In addition, maintains a program of surveillance and appraisal to assure that appropriate standards are met. Where deficiencies are noted, ensures that appropriate corrective action is taken. Monitors beneficiary overpayment identification and collection activities for amounts up to $20,000; prepares overpayment cases for submissions to the General Accounting Office (GAO) for collection and/or to the Department of Justice for possible litigation. Provides Medicare orientation, training, and day-to-day liaison with direct-dealing providers and comprehensive health centers (CHCs). Conducts on-site review of all direct-dealing providers and CHCs on a regular basis. Individually or in concert with other HCFA representatives, represents HCFA in conferring and negotiating with regional and national officials of other departmental agencies and representatives of private and public organizations, in matters of the administration of the Medicare and Medicaid programs and the impact of these programs on beneficiaries. Coordinates with the Social Security district offices concerning the Medicare entitlement, post-entitlement, and beneficiary education functions they perform under agreement with HCFA. Monitors the performance of these functions and makes appropriate recommendations.

4. Division of Medicaid (FPD (I, III, IV, VII–IX)E)

Under the direction of the HCFA Regional Administrator, plans, manages, and provides Federal leadership to State agencies in program implementation, maintenance, and the regulatory review of State Medicaid program management activities under Title XIX of the Social Security Act and assures the propriety of Federal expenditures. Provides consultation and guidance to States on appropriate matters including interpretation of Federal requirements, options available to States under these requirements, and information on practices in other States. Maintains day-to-day liaison with State agencies and monitors their Medicaid program activities and practices by conducting periodic program management and financial reviews to assure State adherence to Federal law and regulations. Reviews, approves, and maintains official State plans and plan amendments for medical assistance. Provides consultation to States in the administration of the amount, duration, scope, and reimbursement of health services available under the State program. Reviews, approves, and monitors State reimbursement systems and determines the allowability or non-allowability of claims for Federal financial participation (FFP); and where State expenditures have not been in

accordance with Federal requirements, takes action to disallow such claims. Stimulates State action toward achievement of selected program objectives and monitors their progress. Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed. Defers reimbursement action on questionable State claims, reviews the claims for allowability, and recommends appropriate action. Issues orders suspending FFP on behalf of State payments to Title XIX provider institutions and the revocation of such suspension orders. Supports, evaluates, and provides advice on State management information and claims payment systems. Implements Title XIX special initiatives, such as prepaid health plans, health maintenance organizations, and other special or experimental programs; and operates major management initiatives such as quality control. Where appropriate, provides opportunity for State input to operational plans, policy, regulations, legislation, and budget formulation. Responds to beneficiary, congressional, provider, and public inquiries concerning Medicaid issues and takes appropriate action on individual case situations. Accepts and responds to Freedom of Information Act requests and on matters concerning the Privacy Act. Supports HCFA headquarters in activities concerning research and demonstration projects.

5. Division of Medicare (FPD (I, III, IV, VII–IX)F)

Under the direction of the HCFA Regional Administrator, assures the effective administration of the Medicare program through the day-to-day working relationship with Medicare contractors, providers, physicians, the Social Security Administration (SSA) regional office and district office personnel, elements of the Office of the Inspector General (OIG), and other organizations and individuals concerned with program operations. Assures the continuing surveillance and appraisal of Medicare contractors in the administration of health insurance provisions. Monitors contractor overpayment identification and collection activities. Monitors beneficiary overpayment identification and collection activities for amounts up to $20,000; prepares overpayment cases for submission to the General Accounting Office (GAO) for collection and/or to the Department of Justice for possible litigation. Identifies problems and initiates action to ensure contractor adherence to national Medicare policy and procedures. Directs Medicare regional financial management activities. Directs a program of in-depth reviews to evaluate the effectiveness of the Medicare program. Conducts quality assurance programs and onsite performance appraisals and analyzes statistical performance reports. Negotiates and approves contractors budget modifications to budget allotments and final cost settlements. Coordinates day-to-day contractor financial management activities. Reviews and approves certain subcontracts and leases, monitors banking activities, and evaluates the cost allocation procedures of contractors. Conducts contractor appraisals. Interprets HCFA's insitutional reimbursement policies. Relates appropriately to elements of SSA, providing consultation on Medicare program matters and any other activity necessary to achieve progrm objectives. Provides direction to Medicare contractors in carrying out their responsibilities for interfacing with peer review organizations (PROs). Establishes and maintains liaison with organizations representing health care professionals, providers of health care services, and program beneficiaries. Takes necessary action on matters relating to the Freedom of Information Act and the Privacy Act. Performs regional responsibilities relating to experimental and demonstration projects. Assumes responsibility for program training and assures timely responses to congressional and public inquiries. Relates appropriately to central office components, such as providing feedback on operations, activities, and problems; and provides regional perspectives in the development of Agency policies, objectives, and work plans. In coordination with the Division of Medicaid, handles inter-program activities such as the Medicare buy-in for Medicaid beneficiaries.

Joseph R. Antos,

Acting Associate Administrator for Management.

[FR Doc. 89–11846 Filed 5–17–89; 8:45 am]

BILLING CODE 4120–01–M

Health Resources and Services Administration

Program Announcement for Grants for Graduate Training in Family Medicine

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 Grants for Graduate Training in Family Medicine are being accepted under the authority of section 786(a), Title VII, of the Public Health Service Act, extended by the Health Professions Reauthorization Act of 1988, Pub. L. (100–607) Title VI.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 786(a) of the Public Health Service Act authorizes the Secretary to award grants to public or nonprofit private hospitals, schools of medicine or to make grants to accredited schools of medicine or osteopathy, and other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating or participating in approved graduate training programs in the field of family medicine. In addition, section 786(a) authorizes assistance in meeting the cost of supporting trainees in such programs who plan to specialize or work in the practice of family medicine.

To receive support, programs must meet the requirments of regulations as set forth in 42 CFR Part 57, Subpart Q.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project provides for the project requirements;

2. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

3. The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Funding Priorities for Fiscal Year 1990

The following funding priorities were established in FY 1989 and the Administration is extending these priorities in Fiscal Year 1990.

In determining the order of funding of approved applications a funding priority will be given to:

(1) Projects which satisfactorily demonstrate an enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document an increase in the number of underrepresented minorities (i.e. Black, Hispanic and American Indian/Alaskan Native over average of the past three years in postgraduate year (PGY) trainees.

(2) Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population.

(3) Applications that demonstrate sufficient curricular time and offering devoted to assuring competence in recognition and treatment of those with HIV infection including AIDS patients.

(4) Applications that demonstrate sufficient curricular time and offering devoted to assuring competence in quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

(5) Applications proposing to provide substantial multidisciplinary geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-15), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Completed applications should be forwarded to the Grants Management Officer at the above address.

If additional programmatic information is needed, please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-04, Rockville, Maryland 20857, Telephone: (301) 443-6820.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Pub. L. 100-607, section 633(a), requires that for grants issued under sections 780, 784, 785, and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services, shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation.

The deadline date for receipt of applications is July 7, 1989. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be acceptable in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

This program is listed at 13.379 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovenmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: April 14, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-11949 Filed 5-17-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-1989]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: May 9, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Request for Occupied Conveyance (Handbook 4310.5 REV-1).

Office: Housing.

Description of The Need for the Information and its Proposed Use: This information collection will be used by the occupant to request permission from the Department of Housing and Urban Development (HUD) to remain a tenant of a property after HUD acquires it.

HUD will use the information to ascertain that the occupant is financially able to pay the fair market rent.

Form Number: HUD–9539.
Respondents: Individuals or Households.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Mortgagee's notice	4,000		19,875		.25		19,875
Responding mortgagees	7,950		1		.50		3,957

Total Estimated Burden Hours: 23,850.
Status: Extension.
Contact:
Art Orton, HUD, (202) 755–5740
John Allison, OMB, (202) 395–6880
Date: May 9, 1989.

Proposal: General Conditions.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: The information collected is required for the performance and compliance with the contractors' and subcontractors' construction contract documents and the PHAs obligations in project construction under the conventional bid method and modernization. The General Conditions are bound into the project specifications and become one of the contract documents.
Form Number: HUD–5370.
Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	2,473		1		.25		619

Total Estimated Burden Hours: 619.
Status: Extension.
Contact:
William C. Thorson, (202) 755–6460
John Allison, OMB, (202) 395–6880
Date: May 9, 1989.

[FR Doc. 89–11955 Filed 5–17–89; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–1917; FR–2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: May 18, 1989.

DATES: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, D.C.D.C. No. 88–2503–OG, HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

The Notice also announces corrections in the following previously published determinations:

1. Unutilized and Underutilized Property: Suitable building; Emerald Heights Housing Area (84 properties) (formerly Tongue Point Naval Station), Astoria, OR. Landholding agency: Department of Labor. Contact: Joseph McGovern, Room S–1513, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 523–6401. (This is not a toll-free number.) This property was previously characterized as excess and surplus property under the control of GSA (54 FR 15813 (April 19, 1989)).

2. Excess and Surplus Property (GSA): Unsuitable building; Portion, Little Sandy Creek Road and Road Fork, Ravenswood, WV (1 property) (Property No. 4–G–WV–487). This property was previously determined as suitable (54 FR 15813 (April 19, 1989)), but has since been determined as unsuitable because the Federal government holds an undivided joint interest in the property with private parties. The property is also subject to periodic flooding.

3. Unutilized and Underutilized Property: Suitable land; US Army Corps of Engineers, Currituck NC (0.19 acre). Landholding agency: US Army. Contact: Bob Swieconek, HQ–US Army Corps of Engineers, Attn: CERE–MM, 20 Massachusetts Ave. NW, Washington, DC 20314–1000; telephone (202) 272–1750. (This is not a toll-free number.) This property was previously characterized as excess and surplus property under the control of GSA (54 FR 19243 (May 4, 1989)).

Date: May 12, 1989.

James E. Schoenberger,
General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89–11954 Filed 5–17–89; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–942–09–4212–19: U–65091]

Public Lands, and Interest in Lands, Held in Trust for the Confederated Tribes of the Goshute Indians

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice corrects the Public Lands, and Interest in Lands,

Held in Trust for the Confederated Tribes of the Goshute Indians previously published in the May 4, 1989, (Vol. 54 No. 85 FR 19245) **Federal Register**. The Notice is corrected by changing the date in line 3 of the Summary from November 23, 1989 to November 23, 1988 and by changing the following legal description to read:

T. 11 S., R. 20 W., SLM Sec. 12, Lots 1–4, NE¼, NE¼SE¼;

Ted D. Stephenson,

Chief, Branch of Land and Mineral Operation.

[FR Doc. 89–11911 Filed 5–17–89; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-060-09-4212-14, UTU-53818]

Realty Action; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, UTU–53818, competitive sale of public land in Carbon County, UT.

SUMMARY: Notice is given that the following described parcel of public land has been examined and through the development of local land-use planning decisions based upon public input, resource considerations, regulations and Bureau policies, has been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using competitive sale procedures (43 CFR 2711.3–1):

Salt Lake Meridian, Utah

T. 15 S., R. 11 E., Section 3, SW4SE4.

The described land aggregate 40.00 acres.

The land is being offered as a competitive sale in accordance with 43 CFR 2711.3–1. The land will not be offered for sale until at least sixty (60) days after publication of this notice. The sale will be at no less than the appraised fair market value of $8000.00.

Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

The terms and conditions applicable to the sale are:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of land will be subject to all valid existing rights and reservations of record. Existing rights and reservations of record include, but are not limited to, Federal oil and gas lease UTU–51804 and access road right-of-way UTU–62061.

Sale Procedures: Sealed bids would be accepted at the Price River Resource Area Office, 900 North 700 East, Price, Utah 84501 during regular business hours, 7:45 a.m. to 4:30 p.m. until July 18, 1989. Bid envelopes must be marked on the right front corner with "Bid for Public Sale," public sale case number (UTU–53818), and sale date (July 25, 1989). Bids must be at not less than the appraised fair market value specified in this notice. Each sealed bid must be accompanied by a certified check, postal money order, or cashier's check made payable to Department of the Interior-BLM for not less than 10 percent of the amount bid. A statement as to the amount of the full bid shall be enclosed. The successful bidder shall submit the remainder of the full purchase price prior to the expiration of one hundred eighty (180) days from date of the sale. The land will be offered for sale at 10:00 a.m. MDT on July 25, 1989, at the Price River Resource Area Office. If the lands are not sold on the sale date, they will remain for sale over the counter until sold or withdrawn from the market.

Bidder Qualifications: Bidders must be U.S. citizens, 18 years of age or more; a State or State instrumentality authorized to hold property; a corporation authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

Bid Standards: The BLM reserves the right to accept or reject any and all offers or withdraw the land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

DATES: For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the lands and the terms and conditions of the sale may be obtained from Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637–4584, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

May 9, 1989.

William C. Stringer,

Acting District Manager.

[FR Doc. 89–11981 Filed 5–17–89; 8:45 am]

BILLNG CODE 4310-DQ-M

[UT-040-09-4212-13]

Realty Action; Exchange of Surface and Mineral Interests in Public and Private Lands, Washington and Juab Counties, UT, U–56998

AGENCY: Bureau of Land Management, Interior.

ACTION: The surface and mineral estates of the following described public lands have been determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, (43 USC 1716).

Salt Lake Base & Meridian, Utah

T. 41 S., R. 13 W,
Sec. 29, SWNWNESE, W2SWNESE, SESWNESE, SESENESE, NWNENWSE, S2NENWSE, N2NWNWSE, W2SWNWSE, SENWSE, NESWSE, W2NWSWSE, SENWSWSE, E2SWSWSE, SESESWSE, E2NESESE, S2NWSESE, S2S2SESE, NESESESE, E2SENESW, SWNESW, NENESESW, NWSESW, W2SWSESW, SWNWNWSE, S2SESESW, W2SENWSW, W2NESWSW, SESWSW.
Containing 147.5 acres.
T. 43 S., R. 16 W.,
Sec. 1, Lots 14 and 15.
Containing 57.65 acres.

In exchange for these lands, the United States will acquire the surface estate only (except as noted) of the following described lands from the Nature Conservancy:

Salt Lake Base & Meridian, Utah

T. 11 S., R. 18 W.,
Sec. 3, S2;
Sec. 4, S2;
Sec. 5, all (surface and mineral estate);
Sec. 6, SESE;
Sec. 7, NESE;
Sec. 8, All;
Sec. 9, all;
Sec. 17, W2SW;
Sec. 18, W2NE, S2NW, S2.
Containing 3,210.2 acres.
T. 41 S., R. 14 W.,
Sec. 14 (a portion of the SWSW);
Sec. 15, Lots 7 and 8;
Sec. 22, Lots 1 through 8, SWSE, SESW;
Sec. 23, NWSW;

Sec. 27, N2NE, SENE, SESW (surface and mineral estate except oil and gas), S2SE (those portions west and north of Interstate 15);
Sec. 34 (those portions west and north of Interstate 15, surface and mineral estate except oil and gas).
Containing 625 acres more or less.

All of the public lands in sec. 29, T. 41 S., R. 13 W., were previously classified for lease or sale under the Recreation and Public Purposes Act to the Hurricane American Legion (U–41912). This lease has been relinquished and the classification is hereby cancelled on all but the following described lands:

Salt Lake Base & Meridian, Utah

T. 41 S., R. 13 W., Sec. 29, SWSESWNE, S2SWSWNE, S2SENW, SENWNESE, NESWNESE, N2SENESE, SWSENESE, NENENWSE, SENWNWSE, E2SWNWSE, N2NESW, W2SENESW, S2NENWSW, E2SENWSW, E2NESWSW, SENWSWSW, NESWSWSW, S2SWSWSW, NWNESESW, S2NESESW, N2SESESW, E2SWSESW, NENWSWSE, W2SWSWSE, N2SESWSE, SWSESWSW, W2NESESE, N2NWSESE, N2SWSESE, NWSESESE.
Containing 150.0 acres.

All of the above described public lands proposed for exchange are segregated from appropriation under the public land laws, including the federal mining laws pending disposition of this action.

SUMMARY: The purpose of this action is to acquire by exchange, non-federal lands valuable for Federal natural resource programs. These lands are adjacent to wilderness study areas and contain habitat for threatened and endangered species. The public interest will be served by making the exchange. Equalization of values will be achieved by cash payment not to exceed 25% of the value of the public lands.

DATES: Interested parties may submit comments on or before July 3, 1989.

ADDRESSES: Detailed information concerning this exchange and copies of the environmental assessment report are available at the Dixie Resource Area Office, 225 North Bluff Street, St. George, Utah 84770. Comments on the proposal should be sent to this address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the exchange are:

Title transfer will be subject to all valid existing rights, including a sewer line right-of-way (U–44040), a road right-of-way (U–55652), and a water pipeline right-of-way (U–51374).

Any objections received during the comment period will be reviewed and the State Director may sustain, vacate, or modify this realty action. In the absence of any objections, this Realty Action Notice will become the final determination of the Department of the Interior.

Date: May 10, 1989.

Gordon R. Staker,

District Manager.

[FR Doc. 89–11961 Filed 5–17–89; 8:45 am]

BILLNG CODE 4310-DQ-M

[CA–940–08–4520–12; Group 984]

Plat of Survey; Filings

May 4, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, San Mateo County

T. 4 S., R. 5 W.

2. This plat, (6 Sheets) representing the survey of a portion of the Golden Gate National Recreation Area, within Rancho Buri Buri and Rancho San Pedro, in Township 4 South, Range 5 West, Mount Diablo Meridian, California, under Group No. 984 California, was accepted April 5, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the National Park Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89–11966 Filed 5–17–89; 8:45 am]

BILLING CODE 4310-40-M

[CA–940–08–4520–12; Group 811]

Plat of Survey; Filings

May 4, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Shasta County

T. 36 N., R. 3 W.

2. This plat representing the dependent resurvey of the Seventh Parallel North along the south boundary, and a portion of the east boundary, Township 36 North, Range 3 West, Mount Diablo Meridian, California, under Group No. 811 California, was accepted March 28, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Shasta National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89–11967 Filed 5–17–89; 8:45 am]

BILLING CODE 4310-40-M

[CA–940–08–4520–12; Group 783]

Plat of Survey; Filings

May 4, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Shasta County

T. 39 N., R. 1 E.

2. This plat, representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, the survey of a portion of the subdivisional lines and the survey of the east and west center lines of Sections 31 and 33 and the north and south center line of Section 35, Township 39 North, Range 1 East, Mount Diablo Meridian, California, under Group No. 783 California, was accepted March 30, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Shasta Trinity National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage

Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-11969 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4520-12; Group 811]

Plat of Survey; Filings

May 4, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Shasta County

T. 36 N., R. 2 W.

2. This plat, representing the dependent resurvey of the Seventh Standard Parallel North along the south boundary, and the east boundary, Township 36 North, Range 2 West, Mount Diablo Meridian, California, under Group No. 811 California, was accepted March 28, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Shasta Trinity National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-11962 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4520-12; Group 811]

Plat of Survey; Filings

May 4, 1989.

1. The plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Shasta County

T. 39 N., R. 2 W.

2. This plat, represented the dependent resurvey of a portion of the south boundary, Township 39 North, Range 2 West, Mount Diablo Meridian, California, under Group No. 811 California, was accepted March 28, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Shasta Trinity National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-11963 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4520-12; Group 811]

Plat of Survey; Filings

May 4, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Shasta County

T. 38 N., R. 2 W.

2. This plat, representing the dependent resurvey of the east boundary, Township 38 North, Range 2 West, Mount Diablo Meridian, California, under Group No. 811 California, was accepted March 28, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Shasta Trinity National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-11964 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12; C-12-89]

Filing of Plat of Survey

May 4, 1989.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, Riverside County

T. 6 S., R. 8 E.

2. This supplemental plat of the N½ of Section 2, Township 6 South, Range 8 East, San Bernardino Meridian, California, was accepted April 26, 1989.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2811, Sacramento, California, 95825.

Herman J. Lyttge,

Public Information Section.

[FR Doc. 89-11968 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12; Group 1015]

Plat of Survey; Filings

May 9, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, San Diego County

T. 11 S., R. 4 W.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, a portion of the boundaries of Tract 4, Lot 43 of Ex Mission San Luis Rey, and the survey of the subdivision of section 8, Township 11 South, Range 4 West, San Bernardino Meridian, California, under Group No. 1015 California, was accepted April 7, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage

Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-11965 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-09-4520-12]

Colorado; Filing of Plats of Survey

May 11, 1989.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., May 11, 1989.

The plat representing the dependent resurvey of portions of the east and west boundaries, the north boundary, and a portion of the subdivisional lines and the subdivision of certain sections, T. 33 N., R. 3 W., New Mexico Principal Meridian, Colorado, Group No. 764, was accepted April 20, 1989.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the south boundary and the subdivisional lines and the subdivision of certain sections, T. 35 N., R. 5 W., New Mexico Principal Meridian, Colorado, Group No. 817, was accepted April 19, 1989.

The plat representing the dependent resurvey of portions of the south and west boundaries and the subdivisional lines, and the subdivision of sections 28 and 33, T. 12 S., R. 79 W., Sixth Principal Meridian, Colorado, Group No. 858, was accepted April 19, 1989.

The plat representing the dependent resurvey of portions of the south and east boundaries, subdivisional lines, and Mineral Survey No. 20553, Skeleton No. 2 lode, T. 9 S., R. 69 W., Sixth Principal Meridian, Colorado, Group No. 893, was accepted April 7, 1989.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service, U.S.D.A.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 89-11977 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-09-4212-22]

Filing of Plats of Survey; Nevada

May 5, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATE: Filings were effective at 10:00 a.m. on May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Bureau of Land Management, (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, (702) 328-6341.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on the date indicated.

Mount Diablo Meridian, Nevada

T. 5 S., R. 55½ E.—Dependent Resurvey and Survey
T. 5 S., R. 56 E.—Survey
T. 6 S., R. 56 E.—Survey
T. 7 S., R. 56 E.—Survey
T. 20 S., R. 60 E.—Supplemental Plat

All the surveys were accepted on April 19, 1989. All the surveys except the supplemental plat were executed to meet certain administrative needs of the U.S. Air Force. The supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

All of the above-listed plats are now the basic record for describing the lands for all authorized purposes. The plats will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Marla B. Bohl,

Acting State Director, Nevada.

[FR Doc. 89-11902 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Reclamation

[INT-DSFES 89-10]

Diamond Fork System, Bonneville Unit, Central Utah Project, Utah

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public hearing on the draft supplement to the final environmental impact statement (DSFES).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Reclamation has prepared a draft supplement to the final environmental impact statement (DSFES) on the Diamond Fork System, Bonneville Unit, Central Utah Project. The DSFES was made available to the public on April 26, 1989. Public hearings will be held to receive comments from interested organizations and individuals on the DSFES.

DATES: Public hearings are scheduled for June 20, 1989, from 7 p.m. to 9:30 p.m. in Salt Lake City, Utah, and for June 21, 1989, from 7 p.m. to 9:30 p.m. in Provo, Utah.

ADDRESSES: The hearings will be held at the following locations: Red Lion Inn, 255 South West Temple, Salt Lake City, Utah. Holiday Inn, 1460 South University Avenue, Provo, Utah.

Address for Comments, Requests to Testify, and Further Information: Projects Manager, Utah Projects Office, Attention: UPO-700, P.O. Box 51338, Provo, UT 84605; Telephone (801) 379-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Fluharty (Team Leader, Utah Projects Office) (801) 379-1000.

SUPPLEMENTARY INFORMATION: Organizations and individuals wishing to present statements at the hearings should contact the Bureau of Reclamation, Utah Projects Office, at the above address, to announce their intention to participate. Requests for scheduled presentations will be accepted through 4 p.m. on June 19, 1989.

Oral comments at the hearings will be limited to 10 minutes. The hearing officer may allow may speaker to provide additional oral comments after all persons wishing to comment have been heard. Whenever possible, speakers will be scheduled according to the time preference mentioned in their letter or telephone requests. Speakers not present when called will lose their privilege in the scheduled order, and will be recalled at the end of the scheduled speakers.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearing should be received by Reclamation's Utah Projects Office at the above address by June 29, 1989, for inclusion in the hearing record.

Date: May 12, 1989.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89-11910 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Receipt of Proposed Development Operations Coordination Document; Forest Oil 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 Forest Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 10785 and 9627, Blocks 276 and 277, respectively, Ship Shoal 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 May 11, 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: 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.

SUPPLEMENTAIIY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 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 Section 250.34 of Title 30 of the CFR.

Date: May 12, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-11978 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-MR-M

Receipt of Proposed Development Operations Coordination Document; Forest Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of 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 8697 and 8700, Blocks 347 and 366, respectively, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support actitities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 10, 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: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purposed of this Notice is to inform the public, pursuant to Sec. 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 in out in revised Section 250.34 of Title 30 of the CFR.

Date: May 11, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-11980 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6989, Block 22, Green Canyon Area, offshore Louisiana.

Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on May 9, 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: May 10, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-11974 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Sandefer Offshore Operating Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Sandefer Offshore Operating Co. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6566, Block 44, West Cameron 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 Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on May 8, 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: 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 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.

Dated: May 9, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-11975 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Organ Pipe Cactus National Monument; General Management Plan

Summary: The National Park Service has initiated scoping for a General Management Plan for the Organ Pipe Cactus National Monument, Pima County, Arizona. Various alternatives for the future management of the monument will be explored and from these, a proposed management plan will be developed. The proposed plan and alternatives, accompanied by an environmental assessment or environmental impact statement depending on the potential impacts of the actions, will then be circulated to the public for review and comment. The date of release of the draft plan and environmental document has not been determined at this time.

Persons wishing to comment or express concerns on the future management directions for Organ Pipe Cactus National Monument should address such comments or any questions on the process to: Superintendent, Organ Pipe Cactus National Monument, Route 1, Box 100, Ajo, AZ 85321.

All comments regarding scoping of the proposed plan should be received within 60 days of the date of this Notice.

Date: May 2, 1989.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 89-11842 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-70-M

Meeting of the Gates of the Arctic Subsistence Resource Commission

AGENCY: National Park Service; Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Gates of the Arctic Subsistence Resource Commission.

The following agenda topics will be discussed:

(1) Call to order.

(2) Introduction of guests.

(3) Elect Chairman.

(4) Review of minutes from last meeting.

(5) Review of Secretary of the Interior's response to the Subsistence Hunting Plan recommendation.

(6) Work on re-draft of Subsistence Hunting Plan recommendation.

(7) Update of National Park Service plans/activities.

(8) Old and New Business.

(9) Adjourn.

DATE: The meeting will begin at 1:00 p.m. on June 7, 1989, continue June 8, 1989, and conclude the afternoon of June 9, 1989.

ADDRESS: The meeting will be held at: Wedgewood Manor, "C" Room, 212 Wedgewood Drive, Fairbanks, Alaska 99701.

FOR FURTHER INFORMATION CONTACT: Roger J. Siglin, Superintendent, P.O. Box 74680, Fairbanks, Alaska 99707, Phone (907) 456-0281 in Fairbanks.

SUPPLEMENTARY INFORMATION: The Gates of the Arctic Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Richard J. Stenmark,

Deputy Regional Director.

[FR Doc. 89-11847 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-70-M

[Order No. 7; Amdt. No. 7]

Superintendents, et al., Western Region; Delegation of Authority

Western Region Order No. 7, approved March 3, 1972, and published in the **Federal Register** of March 28, 1972, (37 FR 6326), as amended, set forth in section 2 certain authority. This amendment changes paragraph (d) to read as follows and deletes paragraphs (h), (h)(1), (h)(2), (h)(3), (i), (i)(1), and (i)(2).

Section 2. Delegation * * *

(d) Chief, Land Resources Division.

The Chief, land Resources Division, is authorized to execute the land acquisition program, including contracting for acquisition of lands and related properties, and acceptance of offers to sell to or exchange with the United States, lands or interests in lands, and to execute all necessary agreements and conveyances incidential thereto; to accept deeds conveying the United States lands or interests in lands; to approve on behalf of the National Park Service offers of settlement in condemnation cases; to provide relocation assistance; and to approve claims for reimbursement under Pub. L. 91-646, as amended.

Date: March 6, 1989.

W. Lowell White,

Acting Regional Director.

[FR Doc. 89-11843 Filed 5-17-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303-TA-19 and 20 (Final) and 731-TA-391-399 (Final)

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From The Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom

Determinations

On the basis of the record [1] developed in its countervailing duty investigations, the Commission has made its determinations pursuant to section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) (the Act). In the tabulation of the Commission's determinations which follows, a determination of "affirmative" indicates that the Commission determines that an industry in the United States is materially injured by reason of imports of the following products [2] which have been found by the Department of Commerce to be subsidized by the Governments of the cited countries:

[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] A determination of "negative" indicates that the Commission determines that an industry in the United States is not materially injured, nor threatened with material injury, nor is the establishment of an industry in the United States materially retarded, by reason of imports of such products.

Country	Investigation No.	Product	Determination
Singapore	303-TA-19 (Final)	Ball bearings and parts thereof [1]	Affirmative.[2]
		Spherical roller bearings and parts thereof [3]	Negative.
Thailand	303-TA-20 (Final)	Ball bearings and parts thereof	Affirmative.[2]

[1] Ball bearings and parts thereof from Singapore and Thailand subject to investigation include ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (Tariff Schedules of the United States Annotated (TSUSA) items 681.1010 and 681.1030); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3900); and parts of motor vehicles containing any the foregoing bearings and not specially provided for (TSUSA item 692.3295). Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTS) subheadings: 8483.20.40, 8483.30.40, 8483.90.20, 8483.30.70, 8485.90.00, and 8708.99.50.

[2] Vice Chairman Cass dissenting. Chairman Brundsale did not participate in the consideration or determinations in Inv. Nos. 303-TA-19/20 (Final) or Inv. Nos. 731-TA-391/399 (Final).

[3] Spherical bearings and parts thereof from Singapore subject to investigation include roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3900); and parts of motor vehicles containing any the foregoing bearings and not specially provided for (TSUSA item 692.3295). Imports of these products are classified under the following HTS subheadings: 8483.20.40, 8483.30.40, 8483.90.20, 8483.90.70, 8485.90.00, and 8708.99.50.

On the basis of the record developed in its antidumping investigations, the Commission has made its determinations pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). In the tabulation of the Commission's determinations which follows, a determination of "affirmative" indicates that the Commission determines that an

industry in the United States is materially injured by reason of imports of the following products which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV):

Country	Investigation No.	Product	Determination
Federal Republic of Germany	731-TA-391 (Final)	Ball bearings and parts thereof [1]	Affirmative.[2 3]
		Spherical roller bearings and parts thereof [4]	Negative.
Federal Republic of Germany	731-TA-391 (Final)	Cylindrical roller bearings and parts thereof [5]	Affirmative.[6 7 8]
		Needle roller bearings and parts thereof [9]	Negative.
		Speherical plain bearings and parts thereof [10]	Affirmative.[8]
		Slewing rings [11]	Negative.
France	731-TA -392 (Final)	Ball bearings and parts thereof	Affirmative.[12]
		Spherical roller bearings and parts thereof	Negative.
		Cylindrical roller bearings and parts thereof	Affirmative.[12 13]
		Needle roller bearings and parts thereof	Negative.
		Spherical plain bearings and parts thereof	Affirmative.
		Slewing rings	Negative.
Italy	731-TA-393 (Final)	Ball bearings and parts thereof	Affirmative.[12 14]
		Spherical roller bearings and parts thereof	Negative.
		Cylindrical roller bearings and parts thereof	Affirmative.[12 13 14]
		Needle roller bearings and parts thereof	Negative.
		Slewing rings	Negative.[15]
Japan	731-TA-394 (Final)	Ball bearings and parts thereof	Affirmative.[12 14]
		Spherical roller bearings and parts thereof	Negative.[12 13]
		Cylindrical roller bearings and parts thereof	Affirmative.[12 13 14]
		Needle roller bearings and parts thereof	Negative.
		Spherical plain bearings and parts thereof	Affirmative.[14]
		Slewing rings	Negative.
Romania	731-TA-395 (Final)	Ball bearings and parts thereof	Affirmative.[16]
		Spherical roller bearings and parts thereof	Negative.[17]
		Slewing rings	Negative.[17]
Singapore	731-TA-396 (Final)	Ball bearings and parts thereof	Affirmative.[16]
		Slewing rings	Negative.[2]
Sweden	731-TA-397 (Final)	Ball bearings and parts thereof	Affirmative.[16 18]
		Spherical roller bearings and parts thereof	Negative.
		Cylindrical roller bearings and parts thereof	Affirmative.[16 18 19]
		Slewing rings	Negative.[17]
Thailand	731-TA-398 (Final)	Ball bearings and parts thereof	Affirmative.[16]
		Slewing rings	Negative.[17]
United Kingdom	731-TA-399 (Final)	Ball bearings and parts thereof	Affirmative.[16 18]
		Spherical roller bearings and parts thereof	Negative.
		Cylindrical roller bearings and parts thereof	Affirmative.[16 18 19]
		Needle roller bearings and parts thereof	Negative.
		Slewing rings	Negative.[17]

[1] For purposes of these investigations, ball bearings and parts thereof include the following articles, whether mounted or unmounted: antifriction balls (TSUSA items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717,680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings and parts thereof (TSUSA item 680.3960); and wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295; all other items entering under this item are not subject to investigation. Imports of these products are classified under the following HTS subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, and 8708.99.50.

[2] Vice Chairman Cass dissenting. Vice Chairman Cass additionally made a negative determination regarding an industry producing wheel hub units. Although Commerce included wheel hub units in each of the "class or kinds" categories in its final determinations, data collected by the Commission with respect to wheel hub units showed that those produced in or imported into the United States employed ball bearings as the rolling element. The rest of the Commissioners did not treat wheel hub units as a separate like product.

[3] The Commission also determines, pursuant to section 735(b)(4)(a), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.

[4] For purposes of these investigations, spherical bearings and parts thereof include the following articles, whether mounted or unmounted: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings and parts thereof (TSUSA item 80.3960) and wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295; all other items entering under this item are not subject to investigation. Imports of these products are classified under the following HTS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8705.50.50, 8708.760.50, and 8708.99.50.

[5] For purposes of these investigations, cylindrical bearings and parts thereof include the following articles, whether mounted or unmounted: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings and parts thereof (TSUSA item 680.3960) and wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295; all other items entering under this item are not subject to investigation. Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

[6] Vice Chairman Cass dissenting.

[7] Commissioner Lodwick dissenting.

[8] The Commission also determines, pursuant to section 735(b)(4)(a), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.

[9] For purposes of these investigations, needle bearings and parts thereof include the following articles, whether mounted or unmounted: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings and parts thereof (TSUSA item 680.3960) and wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295; all other items entering under this item are not subject to investigation. Imports of these products are classified under the following HTS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8383.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

[10] For purposes of these investigations, spherical plain bearings and parts thereof include the following articles, whether mounted or unmounted: all spherical plain bearings which do not employ rolling elements and include spherical plain rod ends. Spherical plain bearings entering under TSUSA items 681.3900 and 692.3295; all other items entering under these items are not subject to investigation. Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, and 8708.99.50.

[11] For purposes of these investigations, slewing rings are large antifriction bearings employing either ball and/or roller bearings as rolling elements entering under TSUS items 664.08 and 664.10. Imports of these products are classified under the following HTS subheadings: 8431.39.00, 8431.49.10, and 8431.49.90.
[12] Vice Chairman Cass dissenting.
[13] Commissioner Lodwick dissenting.
[14] The Commission also determines, pursuant to section 735(b)(4)(a), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.
[15] If applicable.
[16] Vice Chairman Cass dissenting.
[17] If applicable.
[18] The Commission also determines, pursuant to section 735(b)(4)(a), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.
[19] Commissioner Lodwick dissenting.

Background

On September 6, 1988, and November 9, 1988, respectively, the United States Department of Commerce published in the **Federal Register** (53 FR 34329) and (53 FR 45312) its preliminary determinations that imports from Singapore and Thailand of antifriction bearings (other than tapered roller bearings) and parts thereof are being subsidized by the governments of Singapore and Thailand and that imports of such merchandise from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom are being sold in the United States a less than fair value (LTFV). Accordingly, effective September 6, 1988, and November 9, 1988, respectively, the Commission instituted corresponding final countervailing duty and antidumping investigations under the applicable provisions of the Tariff Act of 1930 to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of such merchandise into the United States.

Notice of the institution of the Commission's final investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing notices in the **Federal Register** of October 13, 1988 (53 FR 40137) and December 14, 1988 (53 FR 50304). The Commission's public hearing held in connection with these investigations took place in Washington, DC, on March 30, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce of May 8, 1989. The views of the Commission are contained in USITC Publication 2185 (May 1989), entitled "Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom: Determinations of the Commission in Investigations Nos. 303–TA–19 and 20 (Final) and 731–TA–391–399 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission

Kenneth R. Mason,

Secretary.

Issued: May 12, 1989.

[FR Doc. 89–11879 Filed 5–17–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–289]

Certain Concealed Cabinet Hinges and Mounting Plates; Change of Commission Investigative Attorneys

Notice is hereby given that, as of this date, Gary M. Hnath, Esq. and John R. Kroeger, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorneys in the above-cited investigation instead of Cheri M. Taylor, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

Dated: May 8, 1989.

[FR Doc. 89–11871 Filed 5–17–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–284]

Certain Electric Power Tools, Battery Cartridges, and Battery Chargers; Commission Decision Not to Review Initial Determination Granting Motions for Termination of the Investigation as to Two Respondents on the Basis of Settlement Agreements

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") which grants motions for termination of the subject investigation as to two respondents that have entered into settlement agreements with the complainants.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1061.

SUPPLEMENTARY INFORMATION:

Background

The subject investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337 (1982), as amended by section 1342 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 and 1212–1216 (1988)) in the importation or sale of certain electric power tools, battery cartridges, and battery chargers from Taiwan. The complainants are Makita U.S.A., Inc. ("Makita"), and its subsidiary, Makita Corporation of America ("Makita"). Seventeen domestic firms and fourteen Taiwanese firms were named as respondents. Makita's complaint alleges that each respondent has engaged in one or more of the following unfair acts or unfair methods of competition in the importation or sale of the accused Taiwanese merchandise: infringement of Makita's common-law or registered trademarks; false representation; false advertising; passing off. *See* 53 FR 31112 (Aug. 17, 1988) as amended by 53 FR 47586 and 47587 (Nov. 23, 1988).

On April 7, 1989, the ALJ issued an ID (Order No. 91) granting motions for termination of the investigation as to respondents The Home Depot, Inc. ("Home Depot") and International Consumer Brands, Inc. ("ICB"). *See* 54 FR 16006 (May 20, 1989). Termination was ordered because Home Depot and ICB have entered into settlement agreements with Makita. ICB also has entered into a licensing agreement with Makita. Home Depot and Makita have made arrangements to enter into a similar licensing agreement if and when ICB stops selling the battery cartridges that are the subject of ICB's licensing

agreement or Home Depot stops doing business with ICB. The ALJ found that the motions for termination were properly filed and that termination of the investigation as to Home Depot and ICB would not have an adverse impact on the public.

No party petitioned for review of the ID, and the Commission determined that there was no basis for ordering a review on its own motion. *See* interim Commission rule 210.55, 53 FR 33043 and 33071 (Aug. 29, 1988) (to be codified at 19 CFR 210.55). By virtue of the Commission's determination not to review the ID, it has become the Commission's final determination on the matters in question. *See* interim Commission rule 210.53(h), 53 FR 33043 and 33070 (Aug. 29, 1988) (to be codified at 19 CFR 210.53(h)).

Public inspection

Copies of the following documents are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Docket Section, Room 112, Washington, DC 20436, telephone 202–252–1000: the nonconfidential version of the ID; the motions for termination (Motions Nos. 284–129 and 284–130); the public inspection copies of the settlement and licensing agreements; the public interest statement of the Commission investigative attorneys with respect to the motions for termination; and all other nonconfidential documents on the record of the investigation. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–252–1810.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 11, 1989.

[FR Doc. 89–11872 Filed 5–17–89; 8:45 am]

BILLING CODE 7020–02–M

[Inv. No. 337–TA–283]

Certain Electronic Dart Games; Commission Decision Not to Review an Initial Determination Terminating the Last Two Respondents on the Basis of Consent Orders; Issuance of Consent Orders; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 7) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation with respect to the last two respondents on the basis of consent orders, thereby terminating the investigation.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1103.

Hearing impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–252–1810.

SUPPLEMENTARY INFORMATION: On April 5, 1989, the presiding ALJ issued an (ID) granting complainant Arachnid, Inc.'s motion to terminate the investigation with respect to the only remaining respondents, Cortina International Corporation and Jui-Sheng Lin, on the basis of consent orders.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, Aug. 29, 1988).

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 10, 1989.

[FR Doc. 89–11873 Filed 5–17–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–252]

Certain Heavy-Duty Mobile Scrap Shears; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, David A. Guth, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorney in the above-cited investigation instead of Deborah S. Strauss, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

Dated: May 8, 1989.

[FR Doc. 89–11874 Filed 5–17–89; 8:45 am]

BILLING CODE 7020–02–M

Dismissal of Request for Institution of a Section 751(b) Review Investigation; Natural Bristle Paint Brushes From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731–TA–244 (Final), Natural Bristle Paint Brushes from the People's Republic of China.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and rule 207.45 of the Commission's rules (19 CFR 207.45), that the request does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731–TA–244 (Final), regarding natural bristle paint brushes from the People's Republic of China.[1]

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202–252–1199), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 1986, the Commission issued its determination in investigation

[1] Natural bristle paint brushes are provided for in item 9603.40.40 of the Harmonized Tariff Schedules of the United States (USITC Pub. 2030). (Formerly in item 750.65 of the Tariff Schedules of the United States.)

No. 731-TA-244 (Final), Natural Bristle Paint Brushes from the People's Republic of China (51 FR 4662). The Commission determined that an industry in the United States was threatened with material injury by reason of imports from the People's Republic of China of natural bristle paint brushes, except artists' brushes, which had been found by the Department of Commerce to be sold at less than fair value (LTFV). On February 14, 1986, the Department of Commerce issued an antidumping duty order, notice of which was published in the **Federal Register** (51 FR 5580).

On February 28, 1989, the Commission received a request to review its affirmative determination in investigation No. 731-TA-244 (Final) pursuant to section 751(b) of the act (19 U.S.C. 1675(b)). The request was filed by counsel on behalf of A. Hirsh, Inc., an importer of natural bristle paint brushes from the People's Republic of China.

On March 23, 1989, the Commission published a request for written comments in the **Federal Register** (53 FR 9496) as to whether the changed circumstances alleged by the petitioner were sufficient to warrant a review investigation. Comments were supplied by counsel on behalf of the Paint Applicators Trade Action Coalition (PATAC) opposing the institution of a review investigation. PATAC represents a number of domestic manufacturers of paint brushes who were members of the United States Paint Brush Manufacturers and Suppliers Ad Hoc Import Action Coalition that petitioned for relief in the original investigation (731-TA-244 (Final)). In addition, statements supporting the institution of an investigation were filed by the China Chamber of Commerce of Importers and Exporters of Foodstuffs, Native Produce and Animal By-Products (China Chamber); Michigan Brush Corporation; and Osborn Manufacturing Company.

After consideration of the request for review and the responses to the notice inviting comments, the Commission has determined, pursuant to 19 U.S.C. 1675(b) the rule 19 CFR 207.45, that the request does not show changed circumstances sufficient to warrant institution of a review investigation regarding natural bristle paint brushes from the People's Republic of China.

By order of the Commission.

Issued: May 12, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-11923 Filed 5-17-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 301X)]

CSX Transportation, Inc.; Abandonment Exemption in Charlotte, Mecklenburg County, NC

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 0.61-mile line of railroad between milepost SFC-0.21 at Cedar Yard and milepost SFC-0.82 just east of its crossing under I-77, in Charlotte, Mecklenburg County, NC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 17, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trails use/rail banking statements under 49 CFR 1152.29 must be filed by May 30, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by June 7, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20523.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 23, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 11, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-11814 Filed 5-17-89; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Finance Docket No. 31440; Sub-No. 1]

David L. Durbano and Phillip D. Scott—Common Control Exemption—Intermountain Western Railroad and Wyoming and Colorado Railroad Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 11343 the control of Intermountain Western Railroad (IWRR) and Wyoming and Colorado Railroad, Inc. (WYCO), by David L. Durbano and Phillip D. Scott (Durbano and Scott). WYCO, a class III

carrier controlled by Durbano and Scott, operates two branch lines and a feeder line: (1) A 104.5–mile line between Laramie, WY, and Walden, CO; (2) a 24–mile line between Walcott Junction and Saratoga, WY; and, (3) a 155–mile feeder line between Ontario and Burns, OR, known as the Oregon and Eastern Branch. Durbano and Scott also control IWRR, which filed a notice of exemption in Finance Docket No. 31440, *Intermountain Western Railroad Company—Lease and Operation Exemption—Line of Oregon Southwestern Railroad Company and Snow Mountain Pine Company* (not printed, served April 21, 1989, to lease and operate a 4-mile line of railroad in Harney County, OR, that connects with WYCO's Oregon and Eastern Branch.

DATES: This exemption is effective on May 21, 1989. Petitions for reconsideration must be filed by June 7, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31440 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' reprentative: Douglas M. Durbano, Durbano, Smith, Reeve & Fuller, 4185 Harrison Boulevard, #320, Ogden, UT 84403.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, [TDD for hearing impaired: (202) 175–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing imparied is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: May 11, 1989

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–11927 Filed 5–17–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–317X]

Indiana Harbor Belt Railroad Co.; Abandonment Exemption in Cook County, IL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 3.30–mile line of railroad comprising that part of its Hammond Branch extending from the Indiana/Illinois state line at or near Hammond, IN, in a generally westerly direction, to the southerly bank of the Calumet River near 125th Street in Chicago, IL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2–year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 17, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c) (2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 30, 1989.[3]

Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by June 7, 1989, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Roger A. Serpe, Indiana Harbor Belt Railroad Company, 175 W. Jackson Blvd., Suite 1460, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 23, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling a Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 11, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–11815 Filed 5–17–89; 8:45 am]

BILLING CODE 7035–01–M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investiation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Office of Justice Programs

Crime Victim Compensation Grants; Proposed Program Guidelines

AGENCY: Office of Justice Programs, Office for Victims of Crime, Justice Department.

ACTION: Notice of Proposed program guideline.

SUMMARY: The Office of Justice Programs is publishing for public comment proposed Program Guidelines to implement the crime victim compensation grant provisions of the Victims of Crime Act of 1984 (VOCA), Pub. L. 98–473, as amended by the Children's Justice and Assistance Act of

1986, Pub. L. 99–401 and as amended by the Anti-Drug Abuse Act of 1988, Title VII, Subtitle D of Pub. L. 100–690 (hereinafter referred to as the Act). The final Guidelines supersede all previous Program Guidelines issued by the Office for Victims of Crime implementing the Crime Victims Compensation grant program.

DATE: Comments are due on or before July 3, 1989.

ADDRESS: Send comments to Office of Justice Programs, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Jay Olson, (202) 724–5947.

SUPPLEMENTARY INFORMATION: The Victims of Crime Act establishes a Crime Victims Fund in the Treasury that receives monies annually from four sources: Criminal fines collected from convicted Federal defendants; new penalty assessments imposed on convicted Federal defendants; forfeited appearance bonds, bail bonds, and collateral security posted by Federal criminal defendants; and literary profits due certain convicted Federal defendants. The 1988 amendments authorize deposits in the Fund through September 30, 1994 and amended section 1402.

In section 1402, the ceiling of the Fund was raised and the allocation modified. The maximum amount which could be deposited in the Fund was raised to $125 million for the Fiscal Years 1989–1991 and to $150 million for Fiscal Years 1992–1994. Any excess of these amounts does not become part of the Fund. The first $2.2 million of excess funds will be made available to the Administrative Office of the U.S. Courts for administrative costs to carry out functions related to the collection of fines with the remaining excess deposited in the general fund of the Treasury.

Funds deposited in the Fund shall be made available in the following manner:

- Of the first $100 million deposited in the fund
  - —49.5% shall be made available for compensation programs;
  - —45% shall be made available for assistance programs;
  - —1% shall be made available for training and technical assistance and for services to Federal victims, and
  - —4.5% shall be made available for Child Abuse Prevention and Treatment Grants (Children's Justice Act).
  - —Of the 4.5% made available for Child Abuse Prevention and Treatment Grants, 15% shall be made available for assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve the handling, investigation and prosecution of child abuse cases, especially child sexual abuse cases.
- Sums up to $5,500,000 above $100 million deposited in the Fund ($105,500,000) shall be made available for Child Abuse Prevention and Treatment Grants.
- Deposits in excess of $105,500,000 but not in excess of $110,000,000 shall be made available for victim assistance programming.
- Of deposits in excess of $110,000,000:
  - —47.5% shall be made available for compensation programs;
  - —47.5% shall be made available for assistance programs;
  - —5% shall be made available for services to victims of Federal crime by eligible crime victim assistance programs.

In addition to the changes in section 1402, the Crime Victims Fund, there were significant amendments to Section 1403, Crime Victims Compensation:

- Annual grant awards to eligible state crime victim compensation programs will be based upon 40 percent of the amounts awarded by the state to crime victims from state sources of revenue, during the preceding fiscal year. The change represents an increase from 35 percent.
- In order for a state to meet or maintain eligibility for a crime victims compensation grant, the state must by October 1, 1990, satisfy the new eligibility requirements of section 1403(b):
  - —State programs must now offer compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence (Section 1403(b)(1)). The amendments further provide that "such program does not, except pursuant to rules established by the program to prevent unjust enrichment of the offender, deny compensation to any victim because that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender." (Section 1403(b)(7).)
  - —State programs must provide compensation to residents of the State who are victims of crimes occurring outside the State if the crimes would be compensable crimes had they occurred inside the State and the places the crimes occurred in are States not having eligible crime victim compensation programs. (Section 1403(b)(6).)
  - —Medical expenses, for which crime victims compensation may be awarded, is expanded to include eyeglasses and other corrective lenses. (Section 1403(b)(2).)

This guideline is intended to implement the crime victim compensation grant provisions of the Act, as amended. Comment is specifically invited on Section III of these Guidelines: State Grant Eligibility Requirements. Guidelines for the victim assistance provisions were issued separately.

This guideline does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs of prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

In addition, because these guidelines will not have significant economic impact on a substantial number of small entities, no analysis of the impact of these rules on such entities is required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The collection of information requirements contained in section VI of the guidelines have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

Guidelines for Crime Victim Compensation Grants

I. Overview of the Statute

Section 1403(a)(1) of the Act provides that funds permitting, the Director will make an annual grant to an eligible crime victim compensation program in an amount equal to 40% of the amount paid from State funds by the program as compensation to victims of crime (excluding amounts paid to compensate victims for property damage) during the preceding fiscal year. If the amount in the Fund is insufficient to award each State 40% of its prior year compensation payouts, section 1403(a)(2) provides that all States will be awarded the same reduced percentage of their prior year payouts out of available funds. For purposes of the victim compensation provisions of the Act, "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States. (Section 1403(4).)

Section 1403 of the Act prescribes the conditions and eligibility criteria related to crime victim compensation grants.

II. Program Requirements for Grants

In order to be eligible for awards under the Act, a State must submit the following information and assurances:

(1) A statement certified by the chief executive of the State, State Attorney General, or the Secretary of State, of the total amount of payments made to victims during the preceding fiscal year from State sources.

(2) The amount of such compensation paid for "property damage";

(3) The total amount and each source of revenue for the program;

(4) A certified copy of the State statute or other legal authority establishing the program.

For the purpose of requirement (1), the amount to be certified is only the amount actually spent by the program to compensate victims of crime. Amounts expended for administration of the program or other types of victim assistance are to be excluded, as are amounts appropriated or collected for the purpose of victim compensation which were not expended.

For the purpose of requirement (2), the term "property damage" is defined by the Act to exclude damage to eyeglasses, corrective lenses, dental devices, and prosthetic devices. Therefore, a State may include payments made for damage to those devices in the amount reported under requirement (1) as compensation to victims of crime. Compensation paid to reimburse crime victims for damages to, or loss of, any other real or personal property must be reported under requirement (2).

For the purpose of requirement (4), certification may be effected by the chief executive, the State Attorney General, or the clerk of the State legislature.

The requested information and assurances must be provided annually when the applicant State agency furnishes the Office for Victims of Crime with the total amount of payments to victims of criminal violence for the year requested.

III. State Grant Eligibility Requirements

State crime victims compensation programs which apply for a grant under the provisions of the Victims of Crime Act, as amended, must provide assurances of compliance with the requirements of section 1403(b) of the Act and these Guidelines. The definitions of terms used in section 1403(b) appear in section 1403(d): (New statutory language, from the 1988 amendments to the Victims of Crime Act, is italicized.)

(1) the term "property damage" does not include damage to prosthetic devices, *eyeglasses or other corrective lenses*, or dental devices;

(2) The term "medical expenses" includes, to the extent provided under the eligible crime victim compensation program, expenses for *eyeglasses and other corrective lenses*, for dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) the term "compensable crime" means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, and *includes driving while intoxicated and domestic violence;* and

(4) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

A State crime victim compensation program is eligible for a grant upon providing the necessary assurances, described in these guidelines, and documentation of compliance with the eight eligibility requirements in section 1403(b). The requirements are provided below with a discussion of each. New requirements, added by the 1988 amendments, are underlined and must be met by October 1, 1990.

Eligibility Requirements:

1. Such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for

(A) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) Loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) Funeral expenses attributable to a death resulting from a compensable crime.

Discussion: The fundamental criterion of eligibility is an operational State-administered crime victim compensation program. Although an authorized program that has not actually paid out compensation benefits would be technically eligible under subsection 1403(b)(1), the program would not be entitled to any Federal funds because it had not awarded any benefits that the Federal government could match under subsection 1403(a)(1). Federal funds may not be used as "start-up" funds for a new State program.

The 1988 amendments require, as a new condition of eligibility, effective October 1, 1990, that a State must specifically include two categories of crime victims to those eligible for crime victims compensation. These two categories are victims of drunk driving and domestic violence. Exclusion of victims in these two categories will not be allowable in FY 1991. Victims of drunk driving and domestic violence, including spouse abuse, child abuse, and elder abuse, must be considered for crime victims compensation on the same basis or criteria as other victims of criminal violence.

Some States include the two categories of victims identified above as eligible applicants for compensation but within one or both of the categories the State statute provides specific exceptions, conditions, or limitations which serve to eliminate some victims of drunk driving and domestic violence from compensation awards. Some of the exceptions are indicated below:

- Payments of some but not all compensable expenses available to other victims;
- Denial of compensation to relatives of the perpetrator;
- Denial of compensation to victims living with the perpetrator;
- Requiring, in all drunk driving cases, that a conviction of the offender precede the awarding of compensation.

This short list is not exhaustive. It only serves to identify *some* of the exceptions. The exceptions, or any other specific exceptions, which have the effect of establishing a categorical exclusion for the two types of victims specifically mentioned in the amendments (domestic violence and drunk driving) will not be allowable effective October 1, 1990.

This does not mean that State discretion in determining whether to make an award, has been eliminated. It only means that a denial of compensation to any victim of drunk driving or domestic violence cannot be made solely on the basis of the type of crime, the category of benefits requested, the living arrangement of the offender and victim, or the fact that victim and perpetrator are related.

Domestic Violence

In considering awards of compensation to victims of domestic violence, States should apply the same standards that are applied to claims from victims of other violent crimes, regardless of the familial relationship of the offender and the victim or the fact that they share a residence. This means that the same level of benefits available to other victims should be available to domestic violence victims, and that the same eligibility requirements, such as timely reporting and cooperation with law enforcement, shall apply.

Subsection 1403(b)(7), another new provision of the Act effective October 1,

1990, prohibits State programs from denying compensation because of the living arrangements of victim and perpetrator: "Such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residency by the victim and the offender; * * *" This means that unjust enrichment, as the basis for denying crime victims compensation must be based upon written rules issued by the State crime victims compensation program. Such rules cannot have the effect of denying most domestic violence victims of compensation. The rules relating to unjust enrichment should be applicable to all claims for compensation although it is recognized that domestic violence cases may have the greatest potential for unjust enrichment.

In general, programs must balance the goals of making compensation benefits available to domestic violence victims and preventing unjust enrichment of offenders. State programs are strongly encouraged to work with domestic violence coalitions and representatives to this end.

In developing rules, the States should consider the following:

A. Legal responsibilities of the offender to the victim under the laws of the state, and collateral resources available to the victim from the offender. For example, legal responsibilities may include court-ordered restitution or requirements for spouse and/or family support under the domestic or marital property laws of the State. Collateral resources may include insurance or pension benefits available to the offender to cover the costs incurred by the victim as a result of the crime. As with other crimes, victims of domestic violence should not be penalized when collateral sources of payment are not viable. For example, when the offender refuses to or cannot pay restitution or other civil judgments within a reasonable period of time or when the offender otherwise impedes direct or third party (i.e. insurance) reimbursements.

B. The extent to which the payment will substitute for money that the offender otherwise normally would expend for the benefit of the household or its members. Payments to victims of domestic violence which benefit offenders in only a minimal or inconsequential manner would not be considered unjust enrichment. To deny payments, in some instances, could serve to further victimize the claimant.

C. Consultation with social services and other concerned governmental entities, as well as with private organizations that support and advocate on behalf of domestic violence victims, is again encouraged.

Drunk Driving

Victims of drunk driving is the second category of victims specifically named in the 1988 amendment to section 1403(b)(1). Effective October 1, 1990, State programs will be required to offer compensation to victims and survivors of victims of "drunk driving."

Section 1403(d) defines the term "compensable crime" to include victims of those "driving while intoxicated." In these Guidelines, the Office for Victims of Crime does not make a distinction between the terms "drunk driving" and "driving while intoxicated." By using both terms in the amendments to section 1403 of the Victims of Crime Act, Congress signaled its interest in the inclusion of victims of drunk driving and driving under the influence of other intoxicants. States use these two terms, and others, in their statutes to denote offenses associated with the operation of a motor vehicle while chemically impaired. In addition, the specific classification of offenses is contingent upon the results of appropriate tests to determine intoxication or the influence of drugs or alcohol.

In FY 1991, States will be required to offer crime victims compensation to victims and survivors of victims of vehicular crashes attributable to drunk or intoxicated driving. Consistent with the practice of awarding compensation to all other victims of criminal violence on the basis of a law enforcement officer's investigation report establishing the commission of a crime, victims of drunk driving crashes should be considered for compensation on the same basis. It is acknowledged that occasionally a police report may not be sufficient to establish that a crime took place. With drunk driving cases, as with other cases, individual decisions will have to be made on the basis of available documentation.

2. Such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

Discussion: This criterion requires that a State program promote victim cooperation with the reasonable requests of law enforcement authorities. The States may impose such reasonable requirements as they see fit, but must, at a minimum, require a victim to report the crime to the appropriate criminal justice agency and assist in the identification of the suspect.

3. Such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

Discussion: The Act prohibits States from using the Federal funds made available under the Act to supplant State funds otherwise available for crime victim compensation. Section 1403(b)(3).

The nonsupplantation provision is fundamentally intended to assure that the States use the Federal funds provided under the Act to augment, not replace, otherwise available State funding for victim compensation. More specifically, the States may not decrease their financial commitment to crime victim compensation solely because they are receiving Federal funds for the same purpose.

4. Such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

Discussion: This provision is intended to assure that nonresidents of a State who are victimized in a State that has an eligible compensation program are provided the opportunity to apply for and receive the same compensation benefits that are available to residents of the State. The maintenance of reciprocal agreements with certain other States, or foreign compensation programs will not suffice to meet this criterion. Eligibilty for Federal funding will require the program to extend its coverage to all nonresidents victimized in the State.

5. Such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;

Discussion: This does not constitute a new eligibility requirement, rather it is a rewording of the requirement in a

clearer more concise manner. States must compensate victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes. For example, a victim of a rape occurring on a Federal installation or Indian reservation inside the State must be afforded the same benefits that would be available to the victim if the rape were committed elsewhere in the State.

6. Such program provides compensation to residents of the State who are victims of crimes occurring outside the State if—

(A) The crimes would be compensable crimes had they occurred inside that State; and

(B) The places the crimes occurred in are States not having eligible crime victim compensation programs;

Discussion: This requirement protects residents of a State, with an eligible crime victims compensation program, who are victims of criminal violence in another State which does not have an eligible crime victims program. In such instances, the victim would be eligible for crime victims compensation from the State in which he/she resides effective October 1, 1990. If a person from one State is victimized in another which has an eligible compensation program, the State in which the crime was committed would offer compensation to the victim as provided in 4 above.

7. Such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender; and

Discussion: Effective October 1, 1990, unjust enrichment as the basis for denying crime victims compensation by a State must be based upon written rules issued by the State crime victims compensation program. Such rules cannot have the effect of denying most domestic violence victims of compensation. A full discussion of this requirement was included in the discussion of 1 above.

8. Such program provides such other information and assurances related to the purposes of this section as the Director may reasonably require.

Discussion: States receiving crime victims compensation grants are required to prepare annual performance reports on the form provided by the Office of Victims of Crime. The performance report covers the Federal fiscal year ending September 30 and is due in the Office for Victims of Crime by December 30. Data furnished by the States contributes necessary information for the preparation of the report to the President and the Congress due in December 1990 and on December 31 every two years thereafter.

Information about State crime victims compensation programs and the eligibility of victims of Federal crimes for State compensation awards is not well known on Indian reservations in many States. Because of this situation, the Office for Victims of Crime is proposing, as a new condition of eligibility for a crime victims compensation grant, that States initiate efforts to inform those on Indian reservations about the State crime compensation program and the availability of compensation to all victims of violent State or Federal crimes regardless of where in the State such crime was committed. States will be asked to describe these efforts in their applications for Fiscal Year 1990 funding.

IV. Financial Requirements

A. Payment of Grant Funds

1. *Annual Requirement Under $120,000.* Grantees whose annual fund requirement is less than $120,000 will receive Federal funds on a "Check Issued" basis. Upon receipt, review and approval of a REQUEST FOR ADVANCE OR REIMBURSEMENT, H–3 Report (OJP, Form 7160/3) by the grantor agency, a voucher and a schedule for payment is prepared for the amount approved. This schedule is forwarded to the U.S. Treasury requesting issuance and mailing of the check directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs and submitted at least monthly.

2. *Annual Requirement Over $120,000.* Grantees whose annual fund requirement exceeds $120,000 generally receive Federal funds by utilizing the "Letter of Credit" procedures. This funding method is a cash management process prescribed by the U.S. Treasury for all major grant-in-aid recipients.

3. *Check Issuance.* All checks drawn for the payment of fund requests, either under the "Check Issued" or the "Letter of Credit" process, are prepared and disbursed by the U.S. Treasury and *not* by the grantor agency.

4. *Termination of Advance Funding.* If a grantee organization receiving cash advances by letter of credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, the grantor agency may terminate advance funding and require the grantee organization to finance its operations with its own working capital. Payments to grantee will then be made by the direct Treasury check method to reimburse the grantee for actual cash disbursements. It is essential that the grantee organization maintain a minimal amount of cash on hand and that drawdowns of cash are made only when necessary for disbursements.

B. Cost Allowability

Allowable costs for crime victims compensation are:

(1) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(2) Loss of wages attributable to a physical injury resulting from a compensable crime; and

(3) Funeral expenses attributable to a death resulting from a compensable crime.

Amount expended for administration of the program (including the performance of audits are not allowable costs.

States are encouraged, but not required, to provide emergency awards, for allowable costs, when immediate services or assistance are necessary for the victim's health or welfare. A number of States now provide for emergency awards.

Audit costs: Although under OMB Circular A–128 audit costs are generally allowable charges under Federal grants, audit cost incurred at the grantee (State) level are determined to be an administrative expense and, therefore, cannot be paid for with crime victim compensation grant funds.

c. *Audit Responsibilities.* Pursuant to the Office of Management and Budget (OMB) Circular A–128, "Audits of State and Local Governments," grantees, subgrantees, and subrecipients have the responsibility to provide for an audit of their activities. These audits shall be made annually, unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. Note: Institutions of higher education, hospitals, and other nonprofit organizations have the responsibility to provide for an audit of their activities not less than every two years. While governments (state and local) receiving less than $25,000 in any fiscal year are exempt from a single audit, there is no audit exclusion for private nonprofit organizations. However, where state and local governments and nonprofit organizations receive grants or other agreements less than $100,000 and do not obtain audits that meet the requirements of OMB Circulars A–110

and A–128, DOJ grantor organizations shall ensure that Federal funds are spent in accordance with applicable laws and regulations.

Techniques to use to determine recipient compliance with Federal requirements are:

1. Recipient obtained audits made in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General;

2. Previous audits performed on recipients' operations;

3. Desk reviews by program officials of project documentation;

4. Project audits by Federal auditors or auditors obtained by recipients;

5. Evaluations of recipients' operations by program officials.

These audits shall be made by an independent auditor in accordance with generally accepted government auditing standards governing financial and compliance audits. The required audits are to be performed on an organization-wide basis as opposed to a grant-by-grant basis. The audit reports must include:

1. The auditor's report on financial statements of the recipient organization and a schedule of financial assistance showing the total expenditure for each Federal assistance program;

2. The auditor's report on compliance containing:

(a) A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

(b) A negative assurance of those items not tested and a summary of all instances of noncompliance; and

(c) The auditor's report on the study and evaluation of internal control systems, which must identify the organization's significant internal accounting controls designed to provide reasonable assurance that Federal programs are being managed in compliance with applicable laws and regulation. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of that evaluation.

D. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required non-Federal contributions for the purpose of determining whether the recipient has:

1. Financial statements of the government, department, agency, or establishment that present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

2. The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

3. The organization has complied with laws and regulations that may have material effect on its financial statements and on each Federal assistance program.

E. *Audit Implementation.* Grantees are required to specify their arrangement for complying with the provisions of OMB Circular A–128 and include in their grant application, to the extent possible, the following information:

1. The identity of the organization that will conduct the audit;

2. Approximate timing of when the audit will be performed;

3. Audit coverage to be provided. Where the audit will not provide the coverage requirements as specified previously, the audit policy or procedures must describe the specific arrangements for obtaining audit services that will meet the requirements;

4. An identification of the audit standards, if any, with which the grantee will not comply;

5. Receipt and appropriate distribution of the resultant audit report; and

6. Audit resolution policies and procedures to be followed in resolving the audit report.

F. *Fund Suspension or Termination.* If, after notice and opportunity for a hearing, the Office for Victims of Crime, Office of Justice Programs finds that a State has failed to substantially comply with the Victims of Crime Act, The Financial and Administrative Guide for Grants (OJP M 7100.1), these proposed implementing Guidelines, or any implementing regulation, the Office for Victims of Crime, Office of Justice Programs may suspend or terminate funding to the State, or take other appropriate action.

G. *Grant Application.* The Office for Victims of Crime prepares and distributes an annual Program Instruction for crime victims compensation grants. The Program Instruction, which is sent to all State compensation program eligible to apply for a grant, provides the necessary information and guidance for the preparation and submission of an application for a grant award. Enclosed with the Program Instruction is an application kit containing the necessary application materials and instructions for the submission of the required assurances.

V. Additional Requirements

A. Civil Rights

1. *General.* The Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity receiving funds under the Act on the basis of race, color, religion, national origin, handicap, or sex. (See section 1407(e) of the Act.) Recipients of funds under the Act are also subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (prohibiting discrimination in federally-funded programs on the basis of race, color, or national origin), section 504 of the Rehabilitation Act of 1973, 2 U.S.C. 794 (prohibiting discrimination in such programs on the basis of handicap), the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*, and the Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts, C, D, and G.

2. *Required Assurances and Information.* To be eligible for funding under the Act, a crime victim compensation program must submit the following assurances and information:

a. An assurance that the program will comply with all applicable nondiscrimination requirements;

b. An assurance that in the event a Federal or state court or Federal or state administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, national origin, sex, age or handicap against the program, the program will forward a copy of the finding to the Office of Justice Programs, Office for Civil Rights (OCR);

c. The name of the civil rights contact person who has lead responsibility in ensuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCR;

d. An assurance that programs will maintain information on victim services provided by race, national origin, sex, age and handicap.

Note: States are not required to submit this information as part of their program performance report.

B. *Confidentiality of Research Information.* No recipient of monies under the Victims of Crime Act of 1984, as amended, shall use or reveal any research or statistical information furnished under this program by any

person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this program and Act. Such information shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. (See Section 1407(d) of the Act.) This provision in intended, among other things, to assure the confidentiality of information provided by crime victims to those working in State crime victims compensation programs. Whatever the scope of application given this provision, it is clear that there is nothing in the Act or its legislative history to indicate that Congress intended to override or repeal, in effect, a State's existing law governing the disclosure of information which is supportive of the Act's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a State's existing law pertaining to the mandatory reporting of suspected child abuse. See *Pennhurst State School and Hospital v. Halderman, et al,* 451 U.S.1 (1981).

C. *Drug-Free Workplace.* On November 18, 1988, Congress passed the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D). This statute requires that grantees of Federal agencies certify that they will provide drug-free workplaces. Making the required certification is a precondition for receiving a grant from a Federal agency. State crime victims compensation programs that apply for a crime victims compensation grant, as authorized in Section 1403(a)(1) of the Victims of Crime Act (VOCA) must provide the necessary certification. The instrument for the certification in OJP Form 4061/3 and is titled "Certification Regarding Drug-Free Workplace Requirements." The Form is furnished as a part of the grant application packet mailed annually to states eligible to apply for a grant award. The grantee's authorized representative is required to sign and date the certification and include it with the state's application for a crime victims compensation grant award.

VI. Reporting Requirements

A crime victim compensation program receiving funds under the Act will be required to submit an annual performance report. These reports will be on a form prepared and distributed by the Office for Victims of Crime. Reports will be due no later than December 30 for the Federal Fiscal Year ending September 30.

Approved:

Jane Nady Burnley,

Director, Office for Victims of Crime.

[FR Doc. 89–11886 Filed 5–17–89; 8:45 am]

BILLING CODE 4410–18–M

Final Program Guidelines for the Victims of Crime Act Victims Assistance Grant Program

AGENCY: Department of Justice; Office of Justice Programs, Office for Victims of Crime.

ACTION: Notice of final program guidelines for the Victims of Crime Act Victim Assistance Grant Program.

SUMMARY: The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), is publishing final Program Guidelines to implement the victim assistance grant program authorized by the Victims of Crime Act of 1984 (VOCA), Pub. L. 98–473, as amended by the Children's Justice and Assistance Act of 1986 (CJA), Pub. L. 99–401, and as amended by the Anti-Drug Abuse Act of 1988, Title VII, Subtitle D, of Pub. L. 100–690 (hereinafter referred to as the "Act"). The Victims of Crime Act has been codified at 44 U.S.C. 10601, *et seq.*

The Act provides Federal financial assistance to states for the purpose of compensating and otherwise assisting victims of crime and, also, provides funds for training and technical assistance and assisting victims of Federal crimes. These Program Guidelines provide program background, eligibility requirements, and administrative procedures for the implementation of the crime victim assistance grant program as outlined in section 1404 (a) of the Act. The Guidelines are based on the experience gained during the first four years of the programs's implementation and are responsive to the amendments to the Victims of Crime Act of 1984. These Guidelines suspersede all previous Program Guidelines issued by the Office for Victims of Crime (OVC) to imiplement the Victims of Crime Act victim assistance grant program.

FOR FURTHER INFORMATION CONTACT: Duane Ragan, Ph.D, (202) 724–5947. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: On March 7, 1989, the Office for Victims of Crime published for public comment proposed Program Guidelines for the Victims of Crime Act (VOCA) victim assistance grant program in the **Federal Register** (Vol. 54, No. 43, Pages 9571–9580). In response to this publication OVC received 126 individual comments from Congress, national organizations, VOCA state administrators, state advisory groups, statewide and national coalitions, victim service providers, victim advocates, and crime victims.

The Proposed Guidelines contained a complete discussion of all policy issues and program requirements. Commenters were generally appreciative and supportive of the clarification provided regarding allowable costs, eligible programs, and eligible services. The concerns expressed can be grouped into seven major policy issues which include: perpetrator rehabilitation, generic victim services, seed money, underserved populations, program match, and allowable costs and eligible services.

In addition to written comments, OVC solicited and received oral comments from representatives of several national organizations in the field of victim services. All comments were considered by OVC in preparing the final Program Guidelines. OVC does not plan to provide individual written responses to each of the comments received. However, an analysis of the comments received and OVC's response in provided below.

Summary of the Comments to the Proposed Program Guidelines

In the proposed and final Program Guidelines OVC attempted to adhere closely to the letter and spirit of the legislation. The primary purpose of the VOCA victim assistance grant program is to assist states in providing high-quality services that directly improve the health and well-being of victims of crime with priority given to victims of child abuse, domestic violence, and sexual assault and services for previously underserved victim populations.

OVC notes that 37 letters came from domestic violence programs and domestic violence coalitions. Several major themes clearly emerged from this group of commenters. These writers were generally unsupportive of: (1) Any VOCA funds being set aside for victims other than victims of sexual assault, domestic violence, and child abuse; (2) classifying underserved populations as a new priority area; and (3) any limitation on multi-year funding for priority programs. In addition, domestic violence programs and coalitions, along with other programs, almost uniformly agreed that perpetrator rehabilitation in family violence cases should not be supported with VOCA funding.

OVC also received 13 comments from groups which provide services to sexual

assualt victims who also identified general areas of concern and unanimously supported and opposed specific provisions of the proposed Program Guidelines. They opposed any attempt by states to limit the number of years for which a designated priority program would be eligible for funding and specifically requested that OVC issue language prohibiting this practice. This group also urged OVC not to identify previously underserved victim populations as a new or fourth priority. Both domestic violence and sexual assault programs requested that OVC more strongly state that priority programs not be required to provide "generic" services.

Comments received from the VOCA state administrators tended to focus on administrative aspects of the VOCA victim assistance grant program. Of the 15 VOCA state administrators who submitted comments, 8 expressed their views regarding the allocation of a percentage of VOCA victim assistance funds to the previously underserved victim populations. These VOCA state administrators generally agreed that no percentage should be allocated to perviously underserved victim populations thus providing the states with the maximum flexibility to determine the amount to be allocated for this purpose. VOCA state administrators also requested that OVC expand upon the allowable costs and eligible services section of the final Program Guidelines.

OVC received a joint letter from two members of the House of Representatives, Representative John Conyers, Chairman of the Committee on Government Operations, and Representative George Miller, Chairman, Select Committee on Children, Youth, and Families. These congressional representatives reiterated their positions on the purposes of priority programs (i.e., to foster specialized services) and seed money for new programs (i.e., to favor existing programs over newer ones). Moreover, they reasserted their opposition to the proposed requirement for a minimum 10% to support previously underserved populations, relying on their interpretation that the House never intended this new category to be treated like the three original priorities.

In contrast to the views expressed by Representatives Conyers and Miller on the proposed treatment of previously underserved victim populations, Senator Joseph Biden, Jr., Chairman of the Committee on the Judiciary, wrote to OVC stating that "I believe that the department's guidelines requiring states to devote at least ten percent of their victim assistance funds to previously underserved populations of victims is consistent with the explicit language contained in the 1988 drug bill and the intent of the authors of the victim assistance amendments."

Finally, OVC received a wide range of letters from other national and local organizations which focused upon one or two issues. Among these national and local organizations, OVC received strong support for: (1) Establishing a minimum of 10% funding in each state for their respective previously underserved populations; (2) changing the match requirement for new progams; (3) programs providing crisis intervention services receiving priority funding consideration; (4) special consideration to Native Americans; and (5) the statement regarding seed money for new programs.

Analysis of and Response to Comments on the Proposed Program Guidelines

1. *Perpetrator Rehabilitation.* Nearly half of the comments (64) received urged OVC to reconsider the proposal to allow perpetrator counseling to reunite families in domestic violence cases as an eligible service to be supported by VOCA victim assistance grant funds. Comments were received from a broad cross-section of programs and agencies, including VOCA state administrators, battered women shelters, national organizations, rape crisis centers, and general victim services programs. The majority of the comments on this issue came from domestic violence programs and coalitions.

After careful consideration of these comments, OVC has amended the final Guidelines to state that "perpetrator rehabilitation is clearly not a direct service to victims of crime as intended by VOCA and, therefore, not an eligible service or activity to be supported by victim assistance grant funds."

2. *Generic Victim Services.* Approximately 54 letters were received (of which 17 came from individuals associated with one organization) requesting that OVC issue a stronger statement that priority programs need not provide "generic" victim services or extend services to other non-priority victims in order to be eligible for funding. OVC wishes to reiterate even more strongly that there is no requirement that each program designated as a priority program provide what are termed as generic victim services. Further, there is no requirement that all VOCA-funded programs must serve all types of victims.

3. *Seed Money.* OVC received a substantial number of comments (53) on the use of VOCA assistance funds as money to seed the development of new programs. Commenters generally agreed that OVC should issue a stronger statement prohibiting states from limiting the number of years a program may apply for crime victim assistance grants. OVC believes that this issue is best left to the individual states because of the careful balance that states must maintain in appropriately funding victim service programs to meet the divergent needs of their victim populations. However, state administrators are discouraged from establishing a blanket policy of terminating funding to programs receiving awards in previous years solely to fund new programs.

4. *Previously Underserved Populations.* OVC received 53 comments (of which 17 were from individuals associated with one organization) from priority victim organizations requesting that child abuse, sexual assault, and domestic violence programs be eligible for consideration as previously underserved populations. However, given the clear intent of the amendment to the legislation to broaden the support for crime victim services into other areas previously lacking funding support, this is not permissible. It is important to note that although a minimum of 30% has previously been set aside for the three priority area programs, experience has shown that states have allocated the majority of VOCA funds to programs which serve victims of child abuse, domestic violence, and sexual assault. (Seventy-six percent of the monies allocated to state victim assistance programs went to programs serving priority area victims. These monies funded 82% of the VOCA supported programs.) Therefore, states will be asked to identify victims of crime other than those included in the three priority categories in order to fulfill this requirement.

The letter received from Representatives John Conyers and George Miller restated their position that the proposed Guidelines were not in keeping with their interpretation of Congressional intent regarding underserved populations. They believe that the intent of the House of Representatives was that the original priority areas were to be treated more favorably than the recently recognized underserved populations.

The letter received from Senator Joseph Biden, Jr. strongly supported the notion that the proposed minimum 10% allocation for previously underserved populations effectuated the intent of the

amendment. According to Senator Biden when the Senate sought to require states to give consideration to underserved populations of victims similar to the three original priority areas, the Committee used language which was identical to the legislative language in the original Victims of Crime Act. Senator Biden indicated that he and Senator Thurmond, as authors of VOCA in 1984 and co-managers of the criminal justice amendments in the 1988 drug bill, inserted a section-by-section analysis of the Senate amendments into the Congressional Record. This analysis called on the Department of Justice to issue a minimum funding requirement for underserved populations that was identical to the requirement implementing VOCA's three original priority areas. Senator Biden, quoting the *Congressional Record*, wrote that:

> In keeping with the Department's guidelines implementing the priority language of section 1404(A) of the Act, the (Judiciary) Committee directs the Attorney General to issue guidelines that ensure that at least ten percent of a state's victims assistance fund shall be used to provide grants to programs serving previously underserved victim populations, including for example, survivors of homicide victims and victims of drunk and drugged driving incidents (134 Cong. Rec., October 14, 1988, S15960).

OVC also received letters from two national organizations (National Victims Center and Mothers Against Drunk Driving), representing hundreds of victim service programs, supporting OVC's proposal to set aside 10% for previously underserved victims. These two organizations recommended that OVC define previously underserved victim populations by type of crime. Consistent with references in the *Congressional Record*, states are encouraged to identify previously underserved populations of victims by type of crime, e.g., victims of DUI and DWI, survivors of homicide victims, and other victims of violent crime, or Native American victims of crime on Indian reservations. OVC has included Native American victims because of the paucity of victim services on Indian reservations and their lack of access to existing services.

Related to this same issue, comments received suggested that: (1) States be asked to give preference to programs serving previously underserved victim populations with no specific percentage allocated, (2) the 10% allocated represents a funding ceiling, and (3) the previously underserved victim populations should not be considered a new or fourth priority category.

In implementing the program requirement for previously underserved victims, the OVC has considered the conflicting perspectives expressed by Congress and constituency groups. The rationale for establishing a specific level of funding for previously underserved victims of violent crime is to promote the broadest effort possible to assist these victims and to ensure that no category of victim is ignored. With regard to the degree of financial support that should be made available to previously underserved victims, OVC is directing states to allocate at least 10% of their VOCA victim assistance funds to previously underserved victims of violent crime. In this way, one or more previously underserved populations of victims of violent crime, as identified by each state, will constitute a single category for which at least 10% of the state's VOCA victim assistance funds must be allocated. That is to say, for example, if a state were to designate two types of victims as previously underserved for purposes of this section, both populations *together* would share the minimum 10% funding required.

5. *Definition of a Priority Program.* Thirty-one commenters recommended that OVC expand its definition of a priority program to include "specialized" services. Included in these was a joint letter from Representatives Conyers and Miller supporting this wording. OVC has considered these comments and believes this would be helpful in clarifying what is a priority program for purpose of VOCA. Therefore, OVC defines a priority program as one whose principal mission is to offer comprehensive specialized services tailored to the special needs of one or more priority category victims. OVC encourages states to consult with victim service providers, victim advocates, crime victims, etc., in order to identify the appropriate specialized services.

6. *Program Match.* OVC carefully reviewed recommendations to retain the current match requirement for new programs and to restrict program match to *cash* only for new programs. A few writers expressed concern that new programs could use in-kind as well as cash match. Additionally, they expressed concern regarding the relative reduction in the amount of match necessary for new versus existing programs. Commenters suggested that this might send a signal to states that funding new victim programs should receive priority over funding existing victim service programs. *This was not the intent of the proposed changes in match requirements.*

OVC recognizes that a primary purpose of the Victims of Crime Act, as amended, is to expand and enhance the delivery of services to crime victims provided by existing victim assistance programs. The new match requirements reflect the intent of the Act regarding the continuity of existing crime victim assistance programs and address the need for the development of necessary victim service programs.

7. *Other Revisions.* Several VOCA administrators requested clarification on allowable costs and eligible services. The following is a breakdown of those issues and OVC's response.

a. *Legal Services.* Writers inquired whether legal services include the filing of elder abuse petitions and child abuse petitions, as well as temporary restraining orders. OVC considers these to be allowable activities to be supported by VOCA victim assistance funds. OVC believes these are the types of necessary and essential emergency legal services which aid in removing the victim from immediate revictimization as contemplated by the VOCA. All other, non-emergency, legal services are not allowable.

b. *Insurance.* Additional questions arose regarding building and vehicle insurance and the necessary maintenance and repair of a building or a vehicle using VOCA victim assistance funds. The purchase of liability insurance policies and the repair of buildings and vehicles are incidental expenses and do not appear to be necessary to the provision of direct services to crime victims as intended by the Act. Therefore, VOCA victim assistance grant funds may not be used for these purposes.

c. *Rent.* Commenters inquired whether the cost of rent may be charged to a VOCA victim assistance grant. A subgrantee may charge, or prorate, the reasonable cost of rent for a VOCA-funded project. The grantee/subgrantee shall certify in writing that the requested rental charge is consistent with the prevailing rate in the local area and shall maintain documentation in its file to support such a determination.

d. *Equipment Purchases and Capital Expenditures.* Section 1404(b)(2) provides that VOCA victim assistance grant funds may only be used to provide services to victims of crime. However, equipment that is necessary and essential to the delivery of direct services is deemed an allowable cost by OVC.

The Office for Victims of Crime has considered carefully the recommendations of the many commenters. This consideration has led to a number of revisions and further clarification in the final Program Guidelines. These revisions reflect

OVC's objective to carry out the purpose of VOCA, while taking into consideration the diverse coalitions of victim service providers, victim advocates, state administrators, national organizations, crime victims, and members of Congress.

Discussion of Victim Assistance Grant Program, Background, Legislative Changes, and Program Policy

The fundamental approach of these Program Guidelines is to maximize state authority within the context of congressional intent of the Act. In this way, Federal intrusion on the states' decision-making authority will be appropriately limited. Indeed, from its inception, the Act has strongly favored state autonomy within Federally determined guidelines. Program application, reporting, and evaluation requirements have been established at a level necessary to maintain proper Federal stewardship for the funds and to report to the President and Congress on the impact of the funding.

These Guidelines do not constitute a "major" rule as defined by Executive Order 12291 as they do not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

In addition, because these Guidelines will not have significant economic impact on a substantial number of small entities, no analysis of the impact of these rules on such entities is required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The collection of information requirements contained in Section V of the Program Guidelines has been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

The primary purpose of the VOCA victim assistance grant program is to assist states in providing high quality services that directly improve the health and well-being of victims of crime and to provide funding for sexual assault (rape crisis programs), spousal abuse (domestic violence shelters), child abuse (treatment programs), and previously underserved victim populations. A wide range of services for victims of crime are supported by this Act. They include, but are not limited to, ensuring that victims receive timely notification about the various proceedings involved in prosecuting the person accused of the crime and counseling to help the victim overcome the emotional trauma of victimization. Congress has supported the view that some services are more directly related to the emotional healing and recovery of the victim than others.

Since there are not enough dollars available in the Crime Victim Fund to permit funding all victim services, it is the intent of VOCA to ensure that services that directly improve the health and well-being of crime victims receive first consideration when planning the distribution of limited Crime Victim Fund monies. The Office for Victims of Crime encourages state administrators to consider first the funding of programs that offer counseling services, shelter, and other emergency assistance that address the devastating psychological and emotional consequences experienced by victims of crime and their families. Consequently, programs meeting the immediate short-term emergency needs of crime victims should be considered for funding over programs offering other types of services with the exception of programs whose primary purposes are to aid survivors of homicide victims and for whom services may be delayed beyond the initial crisis.

Crime Victims Fund Distribution

The reauthorization legislation establishes a ceiling of $125 million in Fiscal Years 1989–1991 and $150 million to Fiscal Years 1992–1994 for the Crime Victims Fund (hereinafter referred to as the "Fund").

Monies deposited in the Fund shall be made available in the following manner. Of the first $100 million deposited in the Fund: 49.5% shall be made available for victim compensation program grants; 45% shall be made available for victim assistance program grants; 1% shall be available for support of services to Federal crime victims (of which up to 0.5% may be made available for training and technical assistance projects for eligible victim assistance programs and at least 0.5% may be made available for services to victims of Federal crimes), and 4.5% shall be made available under the provisions of the Children's Justice and Assistance Act of 1986. Of the 4.5% made available to the Department of Health and Human Services to improve the investigation and prosecution of child abuse, especially child sexual abuse cases, 15% shall be made available for assisting Native American tribes in developing, establishing, and operating programs designed to similarly improve the handling of child abuse cases, especially child sexual abuse cases in Indian country. This 15% shall be administered by the Office for Victims of Crime.

The next $5,500,000 deposited in the Fund above the first $100 million (i.e., any amounts between $100 million and $105.5 million) shall be made available for Children's Justice Act grant purposes. Deposits in excess of $105,500,000, but *not* in excess of $110 million ceiling, shall be made available for victim assistance program grants.

Of deposits in excess of the $110 million and up to the ceiling, 47.5% shall be made available for victim compensation program grants, 47.5% shall be made available for victim assistance program grants, and 5% shall be made available for services to victims of Federal crimes.

If the total deposited in the Fund during a particular year reaches the ceiling, the excess shall not be a part of the Fund. The first $2.2 million of such excess shall be available to the Federal judicial branch for administrative costs to carry out the functions of the Administrative Office of the U.S. Courts with respect to the collection of criminal fines and penalty assessments. (See subsection 1402(c)(1)(A)) The remaining monies shall be deposited in the General Fund of the United States Treasury.

No deposits shall be made in the Fund after September 30, 1994, under the current reauthorization.

Recent Changes in the Distribution of Victim Assistance Funds to the States

The 1988 amendments to the Victims of Crime Act increased the base amount each state shall receive in victim assistance funds from $100,000 to $150,000 for Fiscal Years 1989, 1990, and 1991, and to $200,000 for Fiscal Years 1992, 1993, and 1994. (See section 1404(a)(5) (A) and (B))

In addition, for the purposes of allocating the base amounts to the states, the United States Virgin Islands and all territories and possessions of the United States are to be included along with the District of Columbia and Puerto Rico. (See section 1404(d)(1))

Victims of Crime Act Victim Assistance Grant Program Final Program Guidelines

I. General Provisions of the Final Guidelines

A. Eligible Applicants

All states including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and all other territories and possessions of the United States are eligible to apply for and receive Victims of Crime Act victim assistance grants. (See section 1404(d)(1) of the Act) For the purpose of these proposed Guidelines, the term "state" includes the District of Columbia, Puerto Rico, the United States Virgin Islands, and any other territory or

possession of the United States (See section 1404(d)(1) of the Act).

B. State Office

The chief executive of each participating state must designate or establish a state office for the purpose of preparing an application for funds and administering the funds received, including fund accounting and disbursement, monitoring, reporting, and audit.

II. Allocation of Funds

A. Fund Availability

Section 1404(a)(1) of the Victims of Crime Act of 1984, as amended, provides that crime victim assistance grants shall be made from the portion of the Fund not used for crime victim compensation grants, or reserved for training and technical assistance activities, or for financial support to victims of Federal crime (See section 1404(c)(1) of the Act), or for grants under the Children's Justice Act (See section 1404 A of the Act). Funds are available for expenditures in the Federal fiscal year of award and in the next succeeding fiscal year. Note: The Federal fiscal year begins on October 1 and ends on September 30 of the following year.

B. Allocation to States

Each state, the District of Columbia, Puerto Rico, and United States Virgin Islands, and any territory and possession shall receive a base amount of $150,000 in fiscal years 1989 through 1991, and a base amount of $200,000 thereafter through fiscal year 1994, and that portion of the then remaining available money to each state that results from a distribution among the states on the basis of each state's population in relation to all states.

C. Allocation of Funds within the States

Funds granted to the states are to be further subgranted within the state to eligible victim services programs. The state has sole discretion as to which programs providing direct services to crime victim receive funds, so long as the eligibility criteria set out in the Act and enumerated in these Guidelines are met.

D. Seed Money

OVC encourages states to take into consideration in developing program funding policy, the range of victim services needed throughout the state, the track record of funded programs, and the extent to which other sources of funding are available to proposed projects and previously funded VOCA projects. States are encouraged to carefully examine their various victim service needs and to expand into new service areas as crime victims funds increase. State administrators are discouraged from establishing a blanket policy of terminating funding to programs receiving awards in previous years solely to fund new programs.

III. Program Requirements

A. Priority and Previously Underserved Victim Populations

Under the Act, the chief executive of the state must certify that the state shall give priority to eligible crime victim assistance programs which have as their principal mission providing direct assistance to victims of sexual assault, spouse abuse, or child abuse, and to programs serving previously underserved populations of victims of violent crime as determined by each state. (See section 1404(a)(2) (A) and (B) of the Act). To meet this requirement, each state shall allocate at least 10% of its total Victims of Crime Act victim assistance grant to each of the three priority categories and at least 10% to programs which serve victims determined by the state to have been previously underserved.

Each state is further required to describe in its application or within 60 days of acceptance of their award the procedures used to identify previously underserved victim populations and the method planned for allocating VOCA funding for these services. The 10% figure provided in these Program Guidelines is intended to represent a base amount of funding to each of the priority areas and to the underserved victims of crime and to give each state discretion to determine the level of additional funding needed.

The Office for Victims of Crime believes it is incumbent upon each state, not the Federal Government, to determine if funding in excess of the minimum base amount level established by the Office for Victims of Crime is needed in a particular priority area. In no way is the 30% base amount targeted for programs serving priority victims nor the 10% base amount targeted for programs serving previously underserved victim populations intended to establish a cap on the amount allocated to programs serving these categories of crime victims. While experience has shown that states have allocated the vast majority of VOCA funds to programs which serve victims of child abuse, domestic violence, and sexual assault, states may provide funding for all types of victim services.

1. *Defining A Priority Program.* OVC defines a priority program as one whose principal mission is to offer comprehensive specialized services tailored to the special needs of one or more priority category of victims. OVC encourages states to consult with victim service providers, victim advocates, crime victims, etc., in identifying what those specialized services should be.

2. *Identifying Previously Underserved Populations.* States must make funds available for services to previously underserved victim populations and are encouraged to identify previously underserved populations of victims by type of crime, e.g., victims of DUI and DWI, survivors of homicide victims, and other victims of violent crime, or Native American victims of crime on Indian reservations. OVC has included Native American victims of crime because of the paucity of services on Indian reservations and their lack of access to existing services due to geographic remoteness.

B. Non-Supplanting

The chief executive of the state of his/her designated state administrator must certify that crime victim assistance grant funds will not be used to supplant state and local funds that would otherwise be available for crime victim services. (See section 1404(a)(2)(B) of the Act.) Federal grant funds are intended to enhance or expand services, not substitute for other sources of support.

C. Eligibility Criteria

States must use crime victim assistance grant funds to support programs that provide direct services to crime victims. Each individual victim assistance project receiving a crime victim assistance subgrant must meet the following eligibility requirements:

1. Be operated by a public agency or nonprofit organization or a combination thereof that provides direct services to crime victims;

2. If it is an existing program, have a record of providing effective services to victims of crime and financial support from other sources. In determining whether or not a program has a "record of providing effective services," the state shall consider whether the program has been providing services to victims of crime for a minimum of one year, has the support and approval of its services by the community, and whether or not an analysis of its activities and financial history shows that it achieves its intended results in a cost-effective manner. An existing program shall be considered to have "financial support from other (non-Federal) sources" if at least 20% of its support (including in-kind contributions) is from non-Federal sources, or an appropriation, as

provided in Chapter 2, paragraph 14(c)(2)(b) of the M 7100.1. (See section 1404(b)(1)(B)(i) of the Act.)

Note: Funds subgranted to Indian tribes or Native American organizations on Indian reservations will require only a 5 percent minimum match (cash on in-kind) of the total costs of the VOCA supported victim assistance program or project.

3. If it is a new program that has not yet demonstrated a record of effective services as required under (2) above, it may be eligible for funding if it demonstrates substantial financial support from non-Federal sources. "Substantial financial support" means that at least thirty-five percent (35%) of its budget is in the form of cash or in-kind contributions from non-Federal sources or an appropriation as provided in Chapter 2, paragraph 14(c)(2)(b) of the M 7100.1. [See section 1404(b)(1)(B)(ii) of the Act.]

Note: Funds subgranted to Indian tribes or Native American organizations on Indian reservations will require only a 5 percent minimum match (cash on in-kind) of the total costs of the VOCA supported victim assistance program or project.

a. *Overmatch.* In a number of the states' subgrant award reports, the Office for Victims of Crime has noted that subgrantees designated a substantial portion of all of their non-Federal dollars as match. States and subgrantees should be mindful that any funds designated as matching funds for Federal dollars are restricted to the same uses outlined in the Program Guidelines for Federal funds. Therefore, it is suggested that subgrantees only provide match at the levels required by the Program Guidelines [i.e., 20% for existing programs and 35% for new programs). In that way, there are no Federal restrictions on the non-Federal dollars not used by subgrant programs as match.

b. *Basis of Match.* The final Program Guidelines will continue to require match on a project-by-project basis. No exceptions will be granted to this policy. Programs receiving block funds must maintain records which clearly show the source, the amont, and the timing of all matching contributions. The M7100.1 also places primary responsibility on the state to ensure subgrantee compliance with this requirement.

4. Utilizes volunteers unless, and to the extent, the state chief executive determines complelling reasons exist to waive this requirement. A "compelling reason" may include statutory or contractual provisions that bare the use of volunteers for certain positions or a lack of persons volunterring after a sustained and aggressive recruitment effort has been conducted.

5. Promotes within the community served coordinaed public and private efforts to aid crime victims. (see section 1404(b)(1)(D) of the Act.) Because of the various kinds of services needed by victims of crime, services are usually provided by a variety of agencies. Therefore, it is essential that these services be coordinated to ensure continuity of support to the victim and to avoid duplication of effort. In determining whether or not a program meets this requirement, the state shall consider the extent to which the program demonstrates that is will coordinate its activities with other service providers in the community, including Federal victim/witness coordinators, so that the best interests of the crime victims are served and interagency communication is enhanced.

6. Assists victims in seeking available crime victim compensation benefits. (See section 1404(b)(1)(E) of the Act.) Such assistance may be achieved by identifying and notifying potential recipients of the availability of compensation and assisting them with application forms and procedures. An eligible program must demonstrate that it will coordinate its activities with the state compensation program, where one exists.

d. Section 1404(b)(1) of the Victims of Crime Act of 1984, as amended, provides specific criteria for programs to be eligible for victim assistance grant funds. The reauthorization and issuance of these Program Guidelines provide an opportunity to clarify issues which have emerged regarding the appropriate use of Victim of Crime Act victim assistance grant funds. The Office for Victims of Crime is mindful of the fact that we now have had four years of experience administering VOCA victim assistance grants. After careful review of the subgrants made in prior fiscal years, the Office for Victims of Crime believes it is necessary to articulate policy positions concerning certain allowable costs and program eligibility.

One area of central importance in this discussion is the relationship between VOCA crime victim compensation and VOCA victim assistance programs. In their initial years of grants, some states used victim assistance grant funds to supplement crime victim compensation awards to victims of crime. In these cases, some programs receiving VO–CA victim assistance grant funds supplemented crime victim compensation claims when a particular loss or expense was not covered by the state crime victim compensation program. This is not an appropriate use of limited VOCA victim assistance funds. It is clear in the legislative history that the crime victim compensation provision of the Act was intended as the sole source of VOCA funding for reimbursement to victims for out-of-pocket expenses relating to a compensable crime. VOCA victim assistance grant funds, on the other hand, are intended to support the provision of direct services to victims of crime.

Crime victim assistance funds shall be used only to provide direct services to victims of crime. (Section 1404(b)(2).) For purposes of these Guidelines, services to victims of crime means those activities that directly benefit individual crime victims including the required and necessary coordination of such activities, i.e., coordination of volunteers and/or coordination of services to the victim which must be provided by other community agencies. Activities unrelated or only tangentially related to the provision of direct services to victims are not eligible for support. Likewise, indirect costs which are often imposed by Indian tribes of Federal grants are *not* permissible in VOCA funded victim assistance grants.

Questions have also arisen as to whether local legal services corporation-funded offices are eligible as victim assistance subgrantees. Legal services, especially legal advocacy services, are not the types of victim services envisioned when the Victims of Crime Act was enacted. The "court related services" eligible for VOCA funding include, but are not limited to, assisting victims with filing temporary restraining orders, explaining court procedures, accompanying a crime victim to court, providing child care services for crime victims while they participate in essential court proceedings, providing transportation to and from court, and providing emotional support to crime victims during a trail. However, a legal services agency is not deemed ineligible as long as it provides the emergency services discussed above, e.g., securing temporary restraining orders, etc. Such programs may seek VOCA funding for the above-described emergency services.

1. The following activities are ineligible for VOCA funding.

a. *Community Education.* General public awareness campaigns designed to raise the public's consciousness of victims issues do not qualify as direct services to crime victims and are ineligible for support with VOCA funds. The community education activities eligible to receive VOCA funds are limited to efforts describing direct

services available and how to obtain a program's assistance, e.g., publication of brochures, pamphlets, etc.

b. *Crime Prevention.* Also ineligible for funding are those programs in which crime victims are not the sole or primary beneficiaries of funded activities. The crime prevention activities eligible to receive VOCA funds are limited to those prevention efforts specifically included in providing emergency assistance after a victimization incident such as services to prevent the immediate reburgularization of a home or an apartment, e.g. boarding up of windows, replacement or repair of security locks, etc. Other more generalized crime prevention efforts are not allowable.

c. *Lobbying, Legislative, and Administrative Advocacy.* Lobbying for particular victim legislation or administrative reform, whether conducted directly or indirectly, is another activity that is ineligible for funding with VOCA victim assistance grant funds. Chapter 5, paragraph 74, subsection 3, of the Office of Justice Programs' *Financial and Administrative Guide for Grants,* M7100.1 [(effective edition) hereinafter referred to as M7100.1], lists the following activites as not allowable: "Any attempt to influence: (i) The introduction of Federal or state legislation; or (ii) the enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation." Refer to paragraph 74 of M7100.1 for further information on allowable and unallowable activities.

d. *Perpetrator Rehabilitation.* Perpetrator counseling and/or rehabilitation is not a direct service to a victim of crime as intended by VOCA and is, therefore, not an eligible service or activity to be supported by victim assistance grant funds.

e. *Needs Assessments, Surveys, Manuals, and Protocols.* The use of VOCA funds to conduct needs assessments, surveys, develop manuals and protocol, or to perform general administrative tasks does not fall within the intent of the Act and is outside the scope of the Program Guidelines.

f. *Fundraising.* Chapter 5, Paragraph 75 of M7100.1 lists fund raising as an unallowable expense.

g. *Equipment Purchases/Capital Expenditures.* Section 1404(b)(2) provides that Victims of Crime Act victim assistance grant funds may only be used to provide services to victims of crime. However, equipment that is necessary and essential to the delivery of direct service is deemed by the Office for Victims of Crime as an allowable cost.

h. *Professional Services of Doctors and Lawyers.* The payment of fees for professional services rendered by lawyers and doctors in most instances extend beyond the intent of the Act and are, therefore, ineligible for VOCA victim assistance funding. Except for the purposes of providing reimbursement for forensic medical examinations, as provided in section III, D(2)(e) of the Act, victims treated for crime related injuries are encouraged to seek reimbursement for medical services rendered by doctors from their state crime victims compensation program. This provision, however, does not prohibit direct service programs from hiring as staff salaried medical/mental health professionals to provide services on site to clients. This differs significantly from a case by case fee-for-service type arrangement. OVC considers only those legal services that include the filing of elder abuse petitions, child abuse petitions, and temporary restraining orders as allowable activities to be supported by VOCA victim assistance funds. All other, non-emergency, legal services are not allowable.

i. *Witness Management and Notification Programs.* Projects whose primary objectives are to improve the prosecutorial efficiency of a prosecutor's office and whose goals are primarily witness management and notification are identified as administrative in nature and are, therefore, ineligible for support with Victims of Crime Act victim assistance grant funds. However, victim/witness programs in prosecutors offices, which provide both victim services such as escort and support during trials and other type of services, can receive VOCA funding support only for that portion of the program that provides direct services to crime victims.

j. *Criminal Justice Improvements.* General criminal justice agency improvements or programs where crime victims are not the sole or primary beneficiaries are not eligible for support with VOCA vicitim assistance grant funds.

k. *Insurance.* The purchase of liability insurance policies and the repair of buildings and vehicles are incidental expenses and do not appear to be necessary to the provision of direct services to crime victims as intended by the Act. Therefore, VOCA grant funds may not be used for these purposes.

l. *Rent.* A subgrantee may charge, or prorate, a reasonable cost of rent for a VOCA-funded project. The grantee/subgrantee shall certify in writing that the requested rental charge is consistent with the prevailing rate in the local area and shall maintain documentation in its file to support such a determination.

2. "Services to victims of crime" include, but are not limited to, the following:

a. Crisis intervention services that meet the urgent short-term emotional or physical needs of crime victims. Crisis intervention services programs are encouraged to coordinate the provision of 24 hour services which may include the operation of a crisis hotline that provides emergency counseling or referral for crime victims;

b. Emergency services that provide temporary shelter for crime victims who cannot safely remain in their current lodgings offer measures such as repair of locks, or boarding-up of windows to prevent the immediate reburglarization of a home or an apartment, or provide crime victims with petty cash for meeting immediate needs related to transportation, food, shelter, and other necessities;

c. Support services that include follow-up counseling following the initial traumatic event; reassurance, empathetic listening, and guidance for resolving practical problems created by the victimization experience; acting on the victims behalf vis-a-vis other social services and criminal justice agencies; assistance in obtaining the swift return of property being kept by police as evidence; intervention, as appropriate, with landlords, creditors or employers; and referral to other sources of assistance, as needed;

d. Court-related services that assist crime victims in participating in criminal justice proceedings including transportation to court, child care, escort services and the filing of elder abuse and child abuse petitions, and temporary restraining orders;

e. Payment of all reasonable costs for a forensic medical examination of a crime victim, to the extent that such costs are not otherwise reimbursed or paid by a third party.

Note: Funds may only be used to pay for those forensic medical examinations that conform to standards adopted by the state or meet the evidentiary requirements of the local prosecutor.

E. The state must establish procedures to assure that funds subgranted to an eligible crime victim assistance program are expended only for providing services to victims of crime. These

procedures shall require a program to demonstrate to the state that the assistance funds it requested are directly related to the delivery of services to crime victims. Any costs, with the exception of audit expenses at the subgrant level, not directly related to service delivery for crime victims must not be charged to a subgrant. Programs that serve both victims and non-victims must reasonably prorate their costs to assure that crime victims funds are used only for victim services.

IV Application Requirements

A. Application Submission.

Applications for crime victim assistance grants must be submitted by the chief executive officer or his/her designee. The Office for Victims of Crime will provide a Program Instruction and Application Kit to each state for each Federal Fiscal Year. The application kit shall include: SF 424-Application for Federal Assistance, a list of assurances, a table of Fund alocations, certification of a drug-free workplace, certification regarding debarment, and additional guidance on how to prepare and submit an application for crime victim assistance grants. The Program Instruction and Application Kit will serve as the guidance document regarding application submission and content.

B. Application Specificity

Applications from the state need not specify the subgrants the state intends to make with the Federal crime victim assistance funds it receives. However, in the application, states must identify the "previously underserved" crime victim population to be served in the state with Federal victim assistance grant funds and discuss how the determination was made.

V. Reporting Requirements

A report to the President and Congress from OVC on the monies collected for the Crime Victims Fund from each source described in Section 1402 and on the effectiveness of the activities supported by the Fund is due on December 31, 1990, and on December 31, every two years thereafter.

Reporting requirements for this program are designed to provide the Office for Victims of Crime with meaningful information about the use of VOCA funds, progress in the delivery of victim services nationwide, and compliance with VOCA Program Guidelines.

Section 1407(b) of the Victims of Crime Act, as amended, requires each recipient of Federal victim assistance grant funds to maintain records as the Director of the Office for Victims of Crime may prescribe including records that fully disclose the amount and disposition by the recipient of sums, the total cost of the undertaking for which such sums are used, and that portion of the cost of the undertaking supplied by other sources, and any other records that will facilitate an effective audit. Section 1407(f) permits the Director to: (1) Terminate payments to a state; 2) suspend payments to a state until the Director is satisfied that noncompliance has ended; or take other action as appropriate towards any state failing to comply substantially with any provision of the Victims of Crime Act or Program Guidelines requirement.

A. Subgrant Award Report

The state is required to notify the Office for Victims of Crime within thirty (30) days of an award of a subgrant, or of a change in an award to a subgrant recipient, and provide all information required to complete a Subgrant Award Report form provided by the Office for Victims of Crime. This information is required on *each* individual project which receives Federal crime victim assistance funds. If Federal victim assistance grant funds are passed through to another agency to further determine the distribution of funds, a Subgrant Award Report form *must* be completed for each program receiving Federal victim assistance grant funds. This report provides the Office for Victims of Crime with information necessary to determine compliance with the Victims of Crime Act, Program Guidelines, and provides information necessary to determine the status of VOCA funded victim services in each state. Each state administrator must notify OVC in their application of the approximate number of Subgrant Award Report forms they will need to meet this program requirement.

Note: OVC will provide the state with blank forms with the notification of award or at a later date, if not available at that time.

B. Performance Report

The state crime victim assistance agency receiving Federal victim assistance grant funds under the Victims of Crime Act is required to submit a performance report 90 days after the end of each anual grant, in the format and on the form provided by the Office for Victims of Crime. The state administrator is responsible for compiling the information and submitting a report to the Office for Victims of Crime. The performance report provides information on the effect the Federal funds have had on services to crime victims in the state. This report should be submitted to the Office for Victims of Crime, Office of Justice Programs, 633 Indiana Avenue NW., Washington, DC 20531, by December 30. Note: OVC will provide each state with a copy of the program performance report form with the notification of award, or at a later date, if not avaialble at the time of the award.

C. Financial Status Report

A Financial Status Report (Form H–1) is required for all grants. This report shall be submitted by the Grantee within 45 days after the end of each calendar quarter. Final reports are due 90 days after the end of the grant. Failure to comply with this requirement may result in administrative action such as the withholding of payments, cancellation of a Letter of Credit, or noncertification of new grant awards. In lieu of using the H–1, grantees may satisfy the financial reporting requirements by completing the H–1 turnaround document. This document is a facsimile of the H–1 extracted from the grantor agency's computer files and sent directly to each grantee. Pertinent information such as grantee name, address, grant number, and the previously submitted financial information (if any) is printed on the form by the computer.

Note: Obligation and expenditure Data must be reported at the Subgrantee Level.

VI. Financial Requirements

A. Payment of Grant Funds

1. *Annual Requirement Under $120,000.* Grantees whose annual fund requirement is less than $120,000 will receive Federal funds on a "Check Issued" basis. Upon receipt, review and approval of a Request for Advance or Reimbursement, H–3 Report (OJP, Form 7160/3) by the grantor agency, a voucher, and a schedule for payment is prepared for the amount approved. This schedule is forwarded to the U.S. Treasury requesting issuance and mailing of the check directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs and submitted at least monthly.

2. *Annual Requirement Over $120,000.* Grantees whose annual fund requirement exceeds $120,000 generally receive Federal funds by utilizing the "Letter of Credit" procedures. This funding method is a cash management process prescribed by the U.S. Treasury for all major grant-in-aid recipients.

3. *Check Issuance.* All checks drawn for the payment of fund requests, either under the "Check Issued" or the "Letter of Credit" process, are prepared and disbursed by the U.S. Treasury and *not* by the grantor agency.

4. *Termination of Advance Funding.* If a grantee organization receiving cash advances by letter of credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, the grantor agency may terminate advance funding and require the grantee organization to finance its operations with its own working capital. Payments to grantee will then be made by the direct Treasury check method to reimburse the grantee for actual cash disbursements. It is essential that the grantee organization maintain a minimal amount of cash on hand and that drawdowns of cash are made only when necessary for disbursements.

B. Cost Allowability

The Victims of Crime Act of 1984, as amended, specifically states that crime victim assistasnce grant funds may be used only for providing direct services to victims of crime. Only those costs directly related and essential to providing direct services to crime victims can be charged to the VOCA-funded subgrant. The following items require specific discussion. For further guidance, see Office of Justice Programs' *Financial and Administrative Guide for Grants,* M7100.1, Chapter 5.

1. *Audit costs:* Although under OMB Circular A–128 audit costs are generally allowable charges under Federal grants, audit costs incurred at the grantee (state) level are determined to be an administrative expense and, therefore, *cannot* be paid for with crime victim assiatance grant funds. Reasonable audit costs incurred at the subgrantee level are, however, considered directly related and essential to the operation of the program and may be reimbursed as allowable costs.

2. *Training:* An eligible subgrantee of crime victim assistance grant funds may only include as a budget item the reasonable cost of staff development for those persons (salaried and volunteer staff) who provide direct services to crime victims. Also included as an allowable cost are the necessary and reasonable travel expenses related to the participation of direct service staff in eligible training programs. Such costs are, however, permitted only within the state or a comparable geographic region;

3. *Printing and Postage:* An eligible subgrantee of crime victim assistance grant funds may include as a budget item reasonable costs of printing and distributing brochures and similar announcements to describe their program's victim services and how to obtain these services.

4. *Examples of Ineligible Costs include but are not limited to:* The administrative costs associated with conducting surveys and needs assessments, developing manuals and protocols, fees for professional services rendered by doctors and lawyers, and those costs associated with fundraising activities.

C. Audit Responsibilities

Pursuant to the Office of Management and Budget (OMB) Circular A–128, "Audits of State and Local Governments," grantees, subgrantees, and subrecipients have the responsibility to provide for an audit of their activities. These audits shall be made annually, unless the state or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. Note: Institutions of higher education, hospitals, and other nonprofit organizations have the responsibility to provide for an audit of their activities not less than every two years. While governments (state and local) receiving less than $25,000 in any fiscal year are exempt from a single audit, there is no audit exclusion for private nonprofit organizations. However, where state and local governments and nonprofit organizations received grants or other agreements less than $100,000 and do not obtain audits that meet the requirements of OMB Circulars A–110 and A–128, DOJ grantor organizations shall ensure that Federal funds are spent in accordance with applicable laws and regulations. Techniques to use to determine recipient compliance with Federal requirements are:

1. Recipient obtained audits made in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General;

2. Previous audits performed on recipients' operations;

3. Desk reviews by program officials of project documentation;

4. Project audits by Federal auditors or auditors obtained by recipients;

5. Evaluations of recipients' operations by program officials.

These audits shall be made by an independent auditor in accordance with generally accepted government auditing standards governing financial and compliance audits. The required audits are to be performed on an organization-wide basis as opposed to a grant-by-grant basis. The audit reports must include:

1. The auditor's report on financial statements of the recipient organization and a schedule of financial assistance showing the total expenditure for each Federal assistance program;

2. The auditor's report on compliance containing:

a. A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

b. A negative assurance of those items not tested and a summary of all instances of noncompliance; and

c. The auditor's report on the study and evaluation of internal control systems, which must identify the organization's significant internal accounting controls designed to provide reasonable assurance that Federal programs are being managed in compliance with applicable laws and regulation. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of that evaluation.

D. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required non-Federal contributions for the purpose of determining whether the recipient has:

1. Financial statements of the government, department, agency, or establishment that present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

2. The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulation; and

3. The organization has complied with laws and regulations that may have material effect on its financial statements and on each Federal assistance program.

E. Audit Implementation

Grantees are required to specify their arrangement for complying with the provisions of OMB Circular A–128 and include in their grant application, to the extent possible, the following information:

1. The identity of the organization that will conduct the audit;

2. Approximate timing of when the audit will be performed;

3. Audit coverage to be provided. Where the audit will not provide the coverage requirements as specified previously, the audit policy or procedures must describe the specific arrangements for obtaining audit services that will meet the requirements;

4. An identification of the audit standards, if any, with which the grantee will not comply;

5. Receipt and appropriate distribution of the resultant audit report; and

6. Audit resolution policies and procedures to be followed in resolving the audit report.

F. Fund Suspension or Termination

If, after notice and opportunity for a hearing, the Office for Victims of Crime, Office of Justice Programs finds that a state has failed to substantially comply with the Victims of Crime Act, M7100.1, these proposed implementing Guidelines, or any implementing regulation, the Office for Victims of Crime, Office of Justice Programs may suspend or terminate funding to the state, or take other appropriate action. Only states may request a hearing; Subgrantees in the state may not.

VII. Additional Requirements

A. Civil Rights

1. *General.* The Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity receiving funds under the Act on the basis of race, color, religion, national origin, handicap, or sex. (See section 1407(e) of the Act.) Recipients of funds under the Act are also subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (prohibiting discrimination in federally-funded programs on the basis of race, color, or national origin), section 504 of the Rehabilitation Act of 1973, 2 U.S.C. 794 (prohibiting discrimination in such programs on the basis of handicap), the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*, and the Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts, C, D, and G.

2. *Required Assurances and Information.* To be eligible for funding under the Act, a crime victim assistance program must submit the following assurances and information:

a. An assurance that the program will comply with all applicable nondiscrimination requirements;

b. An assurance that in the event a Federal or state court or Federal or state administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, national origin, sex, age or handicap aganist the program, the program will forward a copy of the finding to the Office of Justice Programs, Office for Civil Rights (OCR);

c. The name of the civil rights contact person who has lead responsibility in ensuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCR;

d. An assurance that programs will maintain information on victim services provided by race, national origin, sex, age and handicap. Note: States are not required to submit this information as part of their program performance report.

B. Confidentiality of Research Information

No recipient of monies under the Victims of Crime Act of 1984, as amended, shall use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this program and Act. Such information shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. (See section 1407(d) of the Act.) This provision is intended, among other things, to assure the confidentiality of information provided by crime victims to crisis intervention counselors working for victim services programs receiving funds provided under this Act. Whatever the scope of application given this provision, it is clear that there is nothing in the Act or its legislative history to indicate that Congress instended to override or repeal, in effect, a state's existing law governing the disclosure of information which is supportive of the Act's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a state's existing law pertaining to the mandatory reporting of suspected child abuse. See *Pennhurst State School and Hospital* v. *Halderman, et al*, 451 U.S. 1 (1981).

Approved:

Jane Nady Burnley,

Director, Office for Victims of Crime.

[FR Doc. 89-11885 Filed 5-17-89; 8:45 am]

BILLING CODE 4410-18-M

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:00 a.m., Monday, June 12, 1989.

Place: Sheraton International Conference Center, 11810 Sunrise Valley Drive, Reston, Virginia.

Status: Open.

Matters to be Considered: Reports on the possibility of obtaining seized assets, participant recognition for attending training, an Institute newsletter, Board member recommendations for future program activities, and the fiscal year 1991 budget proposal to the Department of Justice and the Office of Management and Budget.

Contact Person For More Information: Larry Solomon, Acting Director, (202) 724-3106.

Larry Solomon,

Acting Director.

[FR Doc. 89-11944 Filed 5-17-89; 8:45 am]

BILLING CODE 4410-36-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Announcement of Vacancies and Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895.29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives

from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs insituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his/her functions under ERISA, and to submit to the Secretary recommendations wtih respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on Tuesday, November 14, 1989. The groups of fields represented are as follows: Accounting field, employee organizations, employers, insurance field, and the general public (pensioners).

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to the Secretary of Labor, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Recommendations must be delivered or mailed on or about August 31, 1989. Recommendations may be in the form of a letter, resolution, or petition, signed by the person making the recommendation, or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation shall identify the candidate by name, occupation or position, telephone number and address. It shall include a brief description of the candidate's qualifications and shall specify the group or field which he or she would represent for the purposes of section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, DC, this 12th day of May, 1989.

David M. Walker,

Assistant Secretary of Labor for Pension and Welfare Benefits.

[FR Doc. 89-11906 Filed 5-17-89; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Fifty-Eighth Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Friday June 30, 1989, in Room S-4215-C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

The purpose of the meeting which will begin at 9:30 a.m., is to consider the items listed below and to invite public comments on any aspect of the administration of ERISA.

I. Introduction and Swearing-In of New Council Members.

II. Assistant Secretary's Report on:

(a) PWBA update and priorities
(b) Introduction of Council Chairperson and Vice Chairperson
(c) Miscellaneous issues.

III. Determination of Council Working Groups for 1989.

IV. Statements from the Public. Members of the Public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before June 23, 1989 to William E. Morrow, Deputy Executive Secretary, ERISA Advisory Council, Room N-5677 U.S. Department of Labor 200 Constitution Avenue NW., Washington, DC 20210. Individuals wishing to address the Advisory Council should forward their request to the Deputy Executive Secretary or telephone (202) 523-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Signed at Washington, DC this 12th Day of May, 1989.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 89-11887 Filed 5-17-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cancellation of Meeting of Humanities Panel

The meeting of the Humanities Panel scheduled for May 26, 1989, and published in the **Federal Register** on April 12, 1989, at page 14712, has been cancelled. The meeting was to review applications submitted to the Humanities Projects in Libraries and Archives Program during the May 1989 deadline, submitted to the Division of General Programs. The meeting was to be held at the National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC, Room 430 from 9:00 a.m. to 5:30 p.m.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89-11875 Filed 5-17-89; 8:45 am]

BILLING CODE 7536-01-M

Meeting of the Opera-Musical Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on June 22, 1989, from 9:00 a.m.-5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is 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. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

May 10, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-11903 Filed 5-17-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-305]

Wisconsin Public Service Corp., Kewaunee Nuclear Power Plant; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. DPR-43 issued to Wisconsin Public Service Corporation (the licensee), for operation of the Kewaunee Nuclear Power Plant located in Kewaunee County, Wisconsin.

Identification of Proposed Action

The amendment would consist of a change to the operating license authorizing extension of the expiration date for the Facility Operating License No. DPR-43 from August 6, 2008 to December 21, 2013.

The amendment to the license is responsive to the licensee's application dated May 23, 1986. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Date of Facility Operating License No. DPR-43, Wisconsin Public Service Corporation, Kewaunee Nuclear Power Plant, Docket No. 50-305 dated May 11, 1989.

Summary of Environmental Assessment

The NRC staff has reviewed the potential environmental impact of the proposed change in the expiration date of the Operating License for Kewaunee Nuclear Power Plant. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Relating to Operation of Kewaunee Nuclear Power Plant" dated December 1972, and more recent NRC policy.

Radiological Impacts

Although the population in the vicinity of Kewaunee Nuclear Power Plant has increased slightly, and also would be likely to increase slightly for the period of the extension, the site requirements of 10 CFR Part 100 are now and would still be met with regard to Exclusion Area Boundary, Low Population Zone, and nearest population center distances. The net annualized environmental impacts attributable to the uranium fuel cycle, which form the basis for Table S-3 of 10 CFR Part 51, remain essentially unchanged from those considered upon initial licensing. The environmental impacts attributable to transportation of fuel and waste to and from the Kewaunee Nuclear Power Plant, with respect to normal conditions of transport and possible accidents in transport would continue to be as described in the FES. In addition, the proposed additional years of reactor operation would not increase the annual public risk from reactor operation.

With regard to normal plant operation, the license complies with the NRC guidance and requirements for keeping radiation exposures "as low as is reasonable achievable" (ALARA) for occupational exposures and for radioactivity in effluents. Technical Specifications are in place to ensure continued compliance with these requirements during additional years of facility operation.

Nonradiological Impacts

The NRC review identified no anticipated additional degradation of the habitat surrounding the Kewaunee Nuclear Power Plant with regard to indigenous plant and animal species for the additional years of facility operation. In addition, the Wisconsin Pollutant Discharge Elimination System permit provides additional environmental protection from nonradiological effluent discharges for the period of the license extension.

The staff also verified that the original cost/benefit analysis provided in the Final Environmental Statement and discussions with respect to commitment of resources and alternatives are still valid.

Finding of No Significant Impact

The staff has reviewed the proposed change to the expiration date of the Kewaunee Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect of the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated May 23, 1986, (2) the Final Environmental Statement Relating to Operation of the Kewaunee Nuclear Power Plant, issued December 1972, and (3) the Environmental Assessment dated May 11, 1989. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin.

Dated at Rockville, Maryland, this 11th day of May 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. 89-11952 Filed 5-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352-OL-2 and 50-353-OL-2; ASLBP No. 89-589-04-OL-R2]

Philadelphia Electric Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Philadelphia Electric Company
Limerick Generating Station, Units 1 and 2 (Design Alternatives)
Facility Operating License No. NPF-39
Facility Construction Permit No. CPPR-107

This Atomic Safety and Licensing Board is being designated pursuant to the provisions of an Order issued by the Commission on May 5, 1989 with respect to an opinion issued February 28, 1989 by the United States Court of Appeals for the Third Circuit granting, in part, a petition for review filed by intervenor Limerick Ecology Action. *Limerick Ecology Action* v. *NRC*, Nos. 85-3431, 86-3314 & 87-3508, slip op. at 76. In granting that petition, the Court ordered the Commission to give additional consideration to an intervenor contention (DES-5) asserting that, in order to comply with its obligations under the National Environmental Policy Act, the Commission must consider certain design alternatives for the mitigation of severe accidents at the Limerick Generating Station. Id. at 47-48.

The Board is comprised of the following administrative judges:

Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555
Jerry Harbour, Atomic Safety and Licensing Board Panel, U.S. Nuclear

Regulatory Commission, Washington, DC 20555

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 9th day of May 1989.

[FR Doc. 89-11984 Filed 5-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206; License No. DPR-13]

Southern California Edison Co. and San Diego Gas & Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Order for Modification of License

I

Southern California Edison Company and San Diego Gas and Electric Company (the licensees) are the holders of Provisional Operating License No. DPR-13 which authorizes the licensees to operate San Onofre Nuclear Generating Station, Unit No. 1, at power levels up to 1347 megawatts thermal (rated power). The facility is a pressurized water reactor located on the licensees' site in San Diego County, California. The license is subject to all applicable provisions of the rules, regulations, and orders of the Nuclear Regulatory Commission.

II

Following the accident at the Three Mile Island Unit 2 facility on March 28, 1979, a number of investigations were undertaken to assess the adequacy of design features, operating procedures, and personnel of nuclear power plants to provide assurance of no undue risk regarding severe reactor accidents. The report "NRC Action Plan Developed as a Result of the TMI-2 Accident" (NUREG-0660, May 1980) described a comprehensive and integrated plan involving many actions that served to increase safety. The Commission-approved items for implementation were identified in a second report "Clarification of TMI Action Plan Requirements" (NUREG-0737, November 1980).

Among the items approved was item II.F.2, "Instrumentation for Detection of Inadequate Core Cooling" which required licensees to describe additional means proposed to provide an unambiguous, easy-to-interpret, indication of inadequate core cooling (ICC).

On November 4, 1982, the Commission refined its requirements in this area and determined that an instrumentation system for detection of inadequate core cooling (ICC) consisting of upgraded subcooling margin monitors, core-exit thermocouples, and a reactor coolant inventory tracking system is required for the operation of pressurized water reactor facilities. These new requirements were the subject of Generic Letter No. 82-28, "Inadequate Core Cooling Instrumentation System" (December 10, 1982).

On the basis of analysis of information provided by licensees, meetings with industry groups and independent studies by the NRC Staff, the Commission found that during a small LOCA, there is a period of time before the core has boiled dry (indicated by core exit thermocouples) when the operators have insufficient information to clearly indicate a void formation in the reactor vessel head or to track the inventory of coolant in the vessel and primary system. The Subcooling Margin Monitor gives early indication of a problem but does not indicate whether the condition is getting worse or better.

The addition of a reactor coolant inventory system improves the reliability of plant operators in diagnosing the approach of ICC and in assessing the adequacy of responses taken to restore core cooling. The benefit is preventive in nature in that the instrumentation assists the operator in avoidance of ICC when voids in the reactor coolant system and saturation conditions result from overcooling events, steam generator tube ruptures, and small break loss of coolant events. The addition of a reactor coolant inventory system, coupled with upgraded in-core thermocouple instruments and a subcooling margin monitor, provides an ICC instrumentation package which could significantly reduce the likelihood of human misdiagnosis and errors for events such as steam generator tube ruptures, loss of instrument bus or control system upsets, pump seal failures, or overcooling events originating from disturbances in the secondary coolant side of the plant. For events of lower likelihood, involving coincidental multiple faults or more rapidly developing small break LOCA conditions, the ICC also reduces the probability of human misdiagnosis and subsequent errors leading to ICC.

III

Southern California Edison (SCE) responded to Generic Letter 82-28 on June 20, 1986,[1] in which SCE concluded that no additional ICC instrumentation was required, but that the core-exit thermocouple system would be upgraded to meet requirements of NUREG-0737. Thus, SCE did not propose to install a reactor vessel water level instrument, contrary to Generic Letter 82-28. The NRC staff's review of the SCE submittal was issued on May 9, 1988 which concluded that relief from this post-TMI item was not acceptable and requested SCE to respond with a commitment to install a reactor vessel water level instrumentation system (RVLIS) and respond to a request for additional information concerning other aspects of II.F.2—the core-exit thermocouples and the subcooling margin monitor.

By letter of August 8, 1988, SCE responded to the request for additional information. In its response, SCE reiterated its belief that there are insufficient safety ro technical benefits to merit the large expenditure, but provided additional information regarding a proposed single non-safety grade thermocouple which could be installed in the reactor upper internals.

SCE's relief from the requirement to install a RVLIS is based upon unique plant design, plant response to transients, and offsite dose considerations.

In comparison to larger and more modern plants, SONGS-1 has a smaller core (1347 Mwt) resulting in a smaller source term. The margin between operating pressure (2085 psi) and the PORV setpoint (2190 psi) is the same as other plants (100 psi). The margin between normal operating temperature and the saturation temperature for the RCS is about 10°F greater. Due to its smaller RCS volume (6940 ft^3) compared with large plants (10,600 ft^3) and high capacity injection pumps, the licensee stated that SONGS-1 is less susceptible to small break LOCAs.

SCE evaluated the Westinghouse differential pressure (dp) RVLIS and the Combustion Engineering (CE) Heated Junction Thermocouple (HJTC) systems for their applicability to SONGS-1. The Westinghouse RVLIS generic design cannot be installed in SONGS-1 due to the lack of a bottom vessel penetration. SCE stated that the pressure vessel head penetrations and reactor internals would require extensive modification and corresponding hydraulic and stress analyses in order to accommodate HJTC probes, resulting in very high cost. Their value-impact assessment was done

[1] The response was delayed due to an extended outage to upgrade the seismic design of the facility.

using the estimated costs associated with installing the HJTC system (this cost is two to three times higher than the average cost). SCE further stated that it has considered a modified Westinghouse dp system which would measure only from the hot leg to the vessel head, but did no serious cost estimates for this alternative. The alternative head-to-hot leg design was deemed less desirable because of its limited measurement range, which is essentially the same as the HJTC system, and its inoperability when primary coolant pumps are running. No mention was made of the possibility of using pump power monitoring to detect voids when the pumps are running. This alternate would meet II.F.2 requirements.

SONGS–1 is the smallest of five Westinghouse plants that are in the range of 0.4 to 0.5 times the size of the modern four-loop Westinghouse plant. Only one, Yankee Rowe, is smaller (600 Mwt) and it has been granted relief from installing a RVLIS. Yankee Rowe, which is located in a remote area, is operating at 400 psi margin between operating pressure and the PORV setpoint and 25°F subcooling margin with upgraded SMM and CET systems. Haddam Neck and Ginna are the most similar to SONGS–1 due to the fact that they do not have reactor vessel bottom penetrations. Ginna has installed a modified Westinghouse type RVLIS from head-to-hot leg, and Haddam Neck has installed the CE HJTC system.

A considerable portion of the SCE submittal is devoted to evaluation of events potentially leading to inadequate core cooling and a probabilistic risk assessment to evaluate the risk of core damage due to ICC with existing SONGS–1 design. Although the study has merit, it involves essentially the same considerations used by the licensees and the NRC several years ago in determining if additional ICC requirements were needed. After due consideration of many analyses, the NRC determined that new requirements were needed and imposed those defined in NUREG–0737. The evaluation of the SCE exemption request is therefore based on the differences in performance between SONGS–1 and larger plants that make ICC less likely to occur or the consequences less severe.

The principal difference noted by the scenarios presented in the submittal is that the smaller RCS volume of SONGS–1 leads to more rapid depressurization and early initiation of safety injection flow in the event of a small break. Safety injection flow can match the break flow for breaks smaller than 2.5 inches and core uncovery is not predicted. For larger breaks in the 2.5 to 5.2 inch range, less uncovery and lower peak clad temperatures are predicted than for larger plants. The report suggests that a 3.0 inch line break at SONGS–1 is comparable to a 4.0 inch line break at more typical larger reactors.

A probabilistic risk assessment focused on the risk associated with inventory-threatening scenarios leading to inadequate core cooling. In a small break LOCA event, the safety injection system is designed to provide sufficient injection flow to prevent core damage. When this injection flow has depleted the Refueling Water Storage Tank, the system must be realigned so that the normal charging system in conjunction with the containment recirculation pumps provide recirculation and injection to the reactor coolant system. The risk assessment utilizes event and fault trees to describe the sequence of events and failures which must occur for an inadequate core cooling condition to result. The fault trees include both equipment and human operator performance estimates for the existing plant configuration and instrumentation. The data input for the assessment were taken mostly from other studies. The validity of this data has not been confirmed, but the overall result appears reasonable in relation to the information given for other plants.

The risk assessment was then adjusted for an assumed incremental improvement which might result from the inclusion of RVLIS. It was assumed, however, that the RVLIS did not provide any new information of value, but was only redundant to the existing information so that the scenarios were virtually unaffected by the addition of RVLIS information. No procedural adjustments were made based on the availability of RVLIS. The only indication of approach to ICC in the existing system is elevated hot leg temperatures or elevated core-exit temperatures which respond only late in the event when the core is partially uncovered. The evaluation gives no credit for early detection of approaching ICC with vessel water level indication and the corresponding potential for corrective operator action. This is contrary to the conclusion reached by the staff based on other analyses which led to the establishment of the RVLIS requirements. The biased input assumption that RVLIS is of no value guarantees the PRA result obtained. For each of the assessments, it is stated that the uncertainty of the analysis was not calculated, but is assumed to be large. In fact, the value of RVLIS in significantly increasing the likelihood of correct operation response is not adequately assessed.

The offsite consequence analysis submitted by SCE does not present a clear case for any less diligence in detecting and preventing ICC. Recent increase in population density in the vicinity of the plant appears to place SONGS–1 in a similar risk category as many other plants, all of which have installed ICC instrumentation as mandated. SONGS–1 has a small advantage due to its lower operating power and correspondingly smaller source term.

The licensees have not presented adequate technical justification for excluding a reactor vessel level measurement system from their instrumentation to detect inadequate core cooling. Other plants of similar size and design have installed an acceptable level measurement system (either a generically approved one or a modified one). For the reasons discussed, I have determined that the public health, safety, and interest require implementation of item II.F.2 of the TMI Action Plan and that the license should be modified, as described below.

IV

Accordingly, pursuant to sections 103, 161b and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, *It is hereby ordered* That Provisional Operating License No. DPR–13 is hereby modified as follows:

> Licensees shall implement all the requirements of item II.F.2, "Inadequate Core Cooling Instrumentation System" (Generic Letter 82–28) as soon as practicable but not later than startup for fuel cycle XI (approximately January 1991). Specific plans for implementation shall be submitted to NRC for approval by no later than December 1, 1989.

The licensees or any person who has an interest adversely affected by this order may request a hearing within 30 days of the date of publication of this order in the **Federal Register**. A request for hearing must be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with copies to the Assistant General Counsel for Enforcement at the same address. If a person other than the licensees requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this order and

should address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested, the Commission will issue an order designating the time and place of the hearing. If a hearing is held, the issue to be considered shall be whether this order should be sustained. Upon the failure to answer or request a hearing within the specified time, this order shall be final without further proceedings.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 10th day of May, 1989.

[FR Doc. 89-11953 Filed 5-17-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26799; File No. SR-PTC-89-1]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by PTC Clearing Corporation Relating to Depository Division Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(10, notice is hereby given that on April 27, 1989, PTC filed with the Securities and Exchange Commission the Proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of Proposed Rule Change

The proposed rule change consists of the following modifications to the Fee Schedule for Participants Trust Company ("PTC"):

Currently, all initial pool deposit fees are waived. Effective May 1, 1989 a new initial deposit policy is in effect.

- For all previously designated coupon rates, i.e., coupons with interest rates of less than or equal to 7.99% and greated than or equal to 12.00%, initial deposit fees will continue to be waived until August 1, 1989. After that date, deposits will be subject to standard pricing.
- For newly designatged coupon rates, initial deposit fees will be waived for 90 days following the first calendar day of the month for which book-entry settlement has been designated.
- Participants wishing to deposit pools prior to designation will have deposit fees waived.

The standard pricing for deposits has been modified as follows:

	New fees	Old fees
Deposits of less than [1] 200 pools (manual).	$7.75 per certificate.	$7.75 per certificate.
Deposits of between 201 and 1,000 pools (automated).	$5.00 per certificate.	No charge.
Deposits over 1,001 pools (automated).	$3.75 per certificate.	No charge.

[1] If a Participant choose to deposit pools manually in excess of 200, the charge will be $7.75 per certificate.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to set fees for certain services provided by the Depository.

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among the Depository's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-PTC-89-1 and should be submitted by June 8, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 9, 1989.

APPENDIX—PARTICIPANTS TRUST CO. SCHEDULE OF CHARGES

Service	Fee
Account maintenance	$5,000/month.
Book-entry delivery/receipt (includes all DK's and FTX transactions between participants).	7.75 each.
Funds movement (end-of-day)	4.50 each.
Seg movements ($.50 per side)	1.00 each.
MVC (bulk seg) movements	50.00 each (regardless of number of pools).

APPENDIX—PARTICIPANTS TRUST CO.
SCHEDULE OF CHARGES—Continued

Service	Fee
Safekeeping	No charge.
P&I disbursements	2.50/pool/month.
Deposits	[1] 7.75 each.
Withdrawals	[2] 7.75 each.
CLF movements	50.00 each/side.
HIC segregation	50.00 each.
Interim accounting adjustments	10.00 each/side.

[1] See attached.
[2] Plus GNMA transfer fee; $50.00 per certificate for same day availability, $25.00 per certificate for next day availability or $10.00 per certificate for two business day availability. These fees are payable to Chemical Bank, as agent for GNMA.

[FR Doc. 89-11880 Filed 5-17-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16951; (811-4493)]

Spirit of America Government Fund, Inc.; Application

May 11, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for de-registration under the Investment Company Act of 1940 ("1940 Act")

Applicant: Spirit of America Government Fund, Inc.

Relevant 1940 Act Section: Section 8(f) of the 1940 Act and Rule 8f-1 thereunder.

Summary of Application: Applicant requests an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on February 17, 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 June 5, 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.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, 477 Jericho Turnpike, Syosset, NY 11791.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272-2190, or Brion R. Thompson, Branch Chief (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant incorporated in the State of Maryland on September 30, 1985 and registered under the 1940 Act as an openend, diversified, management investment company on January 12, 1988. Applicant's registration statement under the Securities Act of 1933 was never declared effective, and Applicant never commenced a public offering of any of its shares.

2. Applicant has not distributed or transferred any assets in connection with the winding-up of its affairs, and does not have any outstanding debts or other liabilites. In addition, Applicant has not retained any assets.

3. Applicant is not a party to any current or pending litigation or administrative proceedings, and is not engaged and does not propose to engage in any business activities other than those necessary to effectuate the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-11945 Filed 5-17-89; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2348; Amdt 1]

Declaration of Disaster Loan Area; Texas (And Contiguous Counties in the State of Louisiana)

The above-numbered Declaration (54 FR 19275) is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated May 4, 1989, to include Houston, Panola, and Smith Counties, in the State of Texas as a result of damages from severe thunderstorms and flooding which occurred on March 28-29, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Leon, Madison, Trinity, Van Zandt, Walker, and Wood, in the State of Texas, and De Soto County in the State of Louisiana, may be filed until the specified date at the previously designated location.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on June 23, 1989, and for economic injury until the close of business on January 24, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: May 9, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assitance.

[FR Doc. 89-11840 Filed 5-17-89; 8:45 am]
BILLING CODE 8025-01-M

[License No. 06/10-0150]

Application for a Conflict of Interest Transaction; Capital Marketing Corp.

Notice is hereby given that Capital Marketing Corporation (CMC), 100 Nat Gibbs Drive, Keller, Texas 76248, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b)(5) of the Regulations governing small business investment companies (13 CFR 107.903(b)(5) (1989) for an exemption from the provisions of the cited Regulations.

CMC proposes to loan $280,000 to Minshik Jung to purchase a Food Fare grocery store located at 130 W. Church, Grand Prairie, Texas 75050.

The proposed financing is brought within the purview of § 107.903(b)(5) of the Regulations because J.B. Preston, a partial owner of the Food Fare grocery store located at 130 W. Church, Grand Prairie, Texas 75050, is an Associate of the CMC by virtue of his being a member of the Board of Directors of Affiliated Food Stores, Inc., a more than 10 percent owner of CMC.

Notice is hereby given that any interested person, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW. Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Keller, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: May 10, 1989.

[FR Doc. 89–11841 Filed 5–17–89; 8:45 am]

BILLING CODE 8025–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Telecommunications Trade Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Correction of notice of public hearing and request for public comments on possible U.S. action in response to certain Japanese restrictions regarding telecommunications trade.

SUMMARY: On May 8, 1989 the USTR issued a notice of public hearing and request for public comments on possible U.S. action in response to certain Japanese restrictions regarding telecommunications trade. Annex A to that notice contained the list of products which will be considered for increased duties or fees or other restrictions. The article description for HTS subheading "8529.90.50 (pt.) in that list is hereby corrected.

Correction: The article description for HTS subheading 8529.90.50 (pt.) is corrected to read as follows: "Parts of apparatus of subheadings 8525.20.3025, 8525.20.3080, or 8525.20.60".

Joshua B. Bolten,

General Counsel.

[FR Doc. 89–11985 Filed 5–17–89; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Service Station at Thermal, CA; Closing

Notice is hereby given that on or about May 19, 1989, the Flight Service Station at Thermal, California, will be closed. Services to the general aviation public of Thermal, formerly provided by this office, will be provided by the Flight Service Station in Riverside, California. This information will be reflected in the next reissuance of the FAA organization statement.

(Sec. 313(a), 72. Stat. 752; 49 U.S.C. 1354)

Jerold M Chavkin,

Regional Administrator, Western-Pacific Region.

Issued in Lawndale, California, on May 9, 1989.

[FR Doc. 89–11915 Filed 5–17–89; 8:45 am]

BILLING CODE 4910–13–M

Advisory Circular 23–8A, Flight Test Guide for Certification of Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23–8A, Flight Test Guide for Certification of Part 23 Airplanes.

Advisory Circular 23–8A provides information and guidance concerning acceptable means, but not the only means, of showing compliance with Part 23 of the Federal Aviation regulations (FAR) concerning flight tests and pilot judgments. Commuter category airplane policy has been included in this AC, due to the addition of Amendment 23–34.

DATE: Advisory Circular 23–8A was issued by the Central Region, Small Airplane Directorate, on February 9, 1989.

HOW TO OBTAIN COPIES: A copy of AC 23–8A may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or from any of the Government Printing office bookstores located in major cities throughout the United States. Identify the publication as AC 23–8A, Flight Test Guide for Certification of Part 23 Airplanes, Stock Number 050–007–00817–1. The cost of AC 23–8A is $12.00. Send Check or money order with your request, made payable to the Superintendent of Documents. Orders for mailing to foreign countries should include an additional 25 percent of the total price of cover handling. No C.O.D. orders are accepted.

Issued in Kansas City Missouri, on May 1, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–11854 Filed 5–17–89; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–89–20]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purposes 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 summary disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 7, 1989.

ADDRESSES: 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 (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 10, 1989.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25769
Petitioner: Allegheny Commuter
Regulations Affected: 14 CFR 135.159(a)

Description of Relief Sought: To allow petitioner to substitute a third attitude indicator in place of a gyroscopic rate of turn indicator aboard SAAB SF-340A aircraft.

Docket No.: 25858
Petitioner: Riaz Haghpajuh
Sections of the FAR Affected: 14 CFR 63.35
Description of Relief Sought: To allow petitioner to serve as a flight engineer without retaking the FEX written test, which expired on December 31, 1988.

Docket No.: 065CE
Petitioner: Burkhart Grob
Sections of the FAR Affected: 14 CFR 23.841(a)
Description of Relief Sought: Petitioner is requested an exemption from § 23.841(a) which requires that operations above 31,000 feet maintain a cabin pressure altitude of 15,000 feet or less.

Docket No.: 066CE
Petitioner: Beech Aircraft Corporation
Sections of the FAR Affected: 14 CFR 23.207(c)
Description of Relief Sought: To permit type certification of the Beech Model 2000 airplane with a stall warning beginning at airspeeds greater than 10 knots or 15 percent above the stall speed.

Docket No.: 17681
Petitioner: Kenmore Air Harbor, Inc.
Regulations Affected: 14 CFR 135.203(a)(1)
Description of Relief Sought/ Disposition: To allow petitioner to conduct operations under visual flight rules (VFR) outside of controlled airspace, over water, at an altitude below 500 feet.
Grant, March 16, 1989, Exemption No. 2528F

Docket No.: 23290
Petitioner: Air Transport Association of America
Regulations Affected: 14 CFR 121.391(d) and 121.311(f)
Description of Relief Sought/ Disposition: To extend Exemption No. 4298B that allows required flight attendant(s) to be located at the mid-cabin flight attendant station during takeoff and landing on B-767 aircraft operated by petitioner's member airlines and other similarly situated Part 121 certificate holders who may apply for approval from the Principal Operations Inspectors.
Grant, March 17, 1989, Exemption No. 4298C

Docket No.: 22569
Petitioner: Skybird Aviation
Regulations Affected: 14 CFR 135.89
Description of Relief Sought/ Disposition: To allow operation of Gulfstream II and Gulfstream IV aircraft above FL350 and up to and including FL410 feet without requiring at least one pilot seated at the controls to wear a secured and sealed oxygen mask.
Denial, May 4, 1989, Exemption No. 5047

Docket No.: 25742
Petitioner: Skydive Deland, Inc.
Sections of the FAR Affected: 14 CFR 105.43 and 91.15(a)(2)
Description of Relief Sought/ Disposition: To allow foreign skydivers to participate in events held by petitioner at Deland Municipal Airport (Taylor Field), Deland, Florida. The foreign skydivers would be required to show proof of membership in their National Aero Club, along with proof that their equipment has been approved or accepted in the participant's country.
Denial, May 4, 1989, Exemption No. 5046

[FR Doc. 89-11868 Filed 5-17-89; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the fourteenth meeting of RTCA Special Committee 135 on Environmental Conditions and Test Procedures for Airborne Equipment to be held June 12-14, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the minutes of the thirteenth meeting, RTCA Paper No. 84-89/SC135-275; (3) review current status and proposed changes to the fourth draft, RTCA Paper No. 113-89/SC135-277; (4) review status and new proposal for section 20.0, "Radio Frequency Susceptibility"; (5) review status and new proposals for section 22.0, "Lightning Induced Transient Susceptibility"; (6) review status and new proposal for section 23.0, "Lightning Direct Effects"; (7) other business; and (8) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on May 9, 1989.
Geoffrey R. McIntyre,
Designated Officer.
[FR Doc. 89-11864 Filed 5-17-89; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the seventh meeting of RTCA Special Committee 161 on Minimum Aviation System Performance Standards for Radio Determination Satellite Service to be held June 8-9, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) approval of the minutes of the sixth meeting, RTCA Paper No. 54-88/SC161-34; (3) review and revision of first draft of Minimum Aviation System Performance Standards for Radiodetermination Satellite Service (RDSS), RTCA Paper No. 192-88/SC161-35; (4) other business; and (5) date and location of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 9, 1989.
Geoffrey R. McIntyre,
Designated Officer.
[FR Doc. 89-11863 Filed 5-17-89; 8:45 am]
BILLING CODE 4910-13-M

Informal Airspace Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of informal airspace meeting.

SUMMARY: This notice announces an informal airspace meeting to discuss the modification of the St. Louis, MO, Terminal Control Area (TCA). Alteration of the TCA is being proposed as a means of containing the increased

volume of traffic arriving and departing St. Louis within the TCA.

DATE: The informal airspace meeting will be held on July 26, 1989.

ADDRESS: The informal airspace meeting location is as follows:

St. Louis, MO, TCA
Date: July 26, 1989
Time: 7:00 p.m.
Location: University of Missouri at St. Louis, J.C. Penney Auditorium, 8001 Natural Bridge Road, St. Louis, MO

FOR FURTHER INFORMATION CONTACT: Mr. Dale L. Carnine, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426-3408.

Issued in Washington, DC on May 10, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-11922 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

Proposed Advisory Circular; Aircraft Engine Type Certification Handbook

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed AC (AC No. 33-2B), intended to provide procedures, requirements, and guidance for the type certification of aircraft engines. The AC covers certain subparts of Part 21 and Part 33 of Subchapter C, Chapter I, Title 14, of the Code of Federal Regulations (CFR). This AC provides acceptable means, but not the only means, of compliance for the type certification of aircraft engines.

DATE: Comments must be received on or before July 31, 1989.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attention: Engine and Propeller Standards Staff, ANE-110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Donald F. Perrault, Engine and Propeller Standards Staff, ANE-110, at the above address, telephone (617) 273-7081.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they may desire. Commenters must identify the subject of the AC and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuing the final AC.

Background

AC 33-2A, dated June 5, 1972, was published as the "Aircraft Engine Type Certification Handbook." The material therein principally addressed guidance on the procedural aspects of Federal Aviation Regulations (FAR) Part 21, but offered very little guidance for FAR 33. However, the "purpose" paragraph did incorporate a statement that "* * * the remaining chapters of the handbook pertaining to the design and testing of turbine and reciprocating engines will be issued as they become available." This revision updates and presents the existing procedural information within Chapter I, and incorporates within Chapter II engine type certification rules and guidance material which has since been developed.

Issued in Burlington, Massachusetts, on April 20, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-11914 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

[File No. PFR-1]

Propfan Type Certification Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: The FAA is extending the comment period for the draft report, Propfan Type Certification Requirements, for an additional 45 days in response to a request from the Air Transport Association of America. The comment period will close on June 27, 1989. A notice of availability and request for comments on the draft report, Propfan Type Certification Requirements, was published on February 6, 1989 (54 FR 5711) with a closing date for comments of May 8, 1989.

The draft report provides the results of a FAA study of propfan technology and the certification and safety issues associated with the use of such equipment in the air transportation industry. The draft report also contains recommendations for certification standards to be applied in type certification programs for propfan powered airplanes and their propulsion systems.

DATE: Comments must identify the draft report file number PFR-1 and be received on or before June 27, 1989.

ADDRESS: Comments on the draft report may be mailed or delivered to: Federal Aviation Administration; Aircraft Certification Service; Aircraft Engineering Division; Policy and Procedures Branch, AIR-110; 800 Independence Avenue, SW., Room 335; Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Kaplan, Policy and Procedures Branch, AIR-110, Telephone: (202) 267-9596.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the contents of the draft report by submitting such written data, views, or arguments as they desire to the above specified address. All communications received by the FAA prior to the closing date for comments as specified above will be considered before the final version of the report is issued. The recommendations contained in this draft report may be modified in light of the comments received. A public meeting may also be held if the comments indicate a need to further discuss outstanding issues.

Comments received on the draft report may be examined, before and after the closing date for comments, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays, except Federal holidays, between 8:00 a.m. and 4:00 p.m.

Background

In response to the national need to reduce fuel consumption because of the widespread fuel shortages of the mid-1970's, programs were initiated aimed at achieving greater fuel efficiency in aircraft airframe and engine technology. One result of this effort was the development of a new propulsion concept, commonly referred to as propfans, characterized by propulsor blades with highly swept blade planforms and very thin airfoil sections. The rapid advancement of this propfan technology made it apparent that manufacturers would soon be

approaching the FAA with requests for certification of this equipment. The FAA, therefore, formed a study team in 1986 to gather all available information about the various propfan designs being proposed or under development and to utilize this knowledge in an assessment of the adequacy of the current airworthiness standards regarding type certification of this new equipment.

The team met with manufacturers and with other airworthiness authorities to discuss the new technology and to share views on possible certification and safety issues. The information gathered and recommendations for certification of this equipment are included in this draft technical report, which is being offered for public comment. Since the information contained in this report is intended to serve as advisory material from which proposed certification standards can be developed by the aircraft certification organization, the technical report format was chosen as the medium for public dissemination of the team's findings and recommendations.

How to Obtain Copies

A copy of the draft report, Propfan Type Certification Requirements, may be obtained by contacting the person under **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, DC, on May 10, 1989.

William J. Sullivan,

Assistant Director, Aircraft Certification Service.

[FR Doc. 89-11855 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

Underwater Locating Devices (Acoustic) (Self-Powered)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-C121 prescribes the minimum performance standards that underwater locating devices (acoustic) (self-powered) must meet to be identified with the marking "TSO-C121."

DATE: Comments must identify the TSO file number and be received on or before August 14, 1989.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO-C121, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC, 20591, or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTAL INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of the proposed TSO-C121 may be obtained by contacting the person under **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, DC on May 10, 1989.

John K. McGrath,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89-11856 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; City of Fresno, Fresno County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Fresno County, California.

FOR FURTHER INFORMATION CONTACT: Michael A. Cook, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915. Telephone: (916) 551-1307.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to construct a new 6.7-mile highway from Chestnut Avenue to Highland Avenue (post miles 60.9 to 67.6 of State Route 180) in and immediately east of the City of Fresno. Route 180 is a principal arterial carrying traffic across the San Joaquin Valley and to the Sequoia National Forest and Park. The route serves agricultural traffic, and is of growing importance for commute travel and locally generated urban traffic within Fresno. It serves as a major east-west corridor for travel through the City. Average daily traffic (ADT) for the Route 180 urban corridor is estimated to be 28,500 in 1990. By 2010, without improvements, ADT is projected to be 49,100 with severe congestion.

Proposed roadway options include a 4-, 6-, or 8-lane freeway or expressway and various combinations thereof. Alternatives being studied include:

1. *Freeway/Expressway on New Alignment.* This would connect with the previously designated Route 180 freeway alignment at Chestnut Avenue between Olive and Belmont Avenues and proceed eastward to near Fowler Avenue, then turn southeastward to Kings Canyon Road (existing Route 180) near Highland Avenue. Possible route variations east of Fowler Avenue include one that reaches the existing highway near Temperance Avenue and two that pass near the intersection of DeWolf and Tulare Avenues.

2. *Improve Existing Route 180.* This alignment would follow Chestnut Avenue southward to Kings Canyon Road, then eastward along Kings Canyon Road.

3. *Transportation System Management (TSM).* This includes a combination of improved public transit, carpools, vanpools, traffic signalization and lane restriping.

4. *Mass Transit.* This would rely primarily on expanded transit service.

5. *No Build.* This alternative would provide no improvements.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. If you have any information regarding historic resources, endangered species or other sensitive issues which could be affected by this project, please notify this office. Also, please indicate if you would be interested in being notified at completion of historic resource studies.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued: May 11, 1989.

Susan E. Klekar,

District Engineer, Sacramento, California.

[FR Doc. 89-11986 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Rockland and Westchester Counties, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed highway project in Westchester County, New York.

FOR FURTHER INFORMATION CONTACT:

Robert J. Lambert, Director, Facilities Design Division, New York State Department of Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12232, Telephone: (518) 457-6452,

or

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 472-3616.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to improve Interstate 287, the Cross Westchester Expressway, in Westchester County. Since much of the traffic which uses the corridor comes from the Tappan Zee Bridge, the study area and project for the Environmental Impact Statement will extend into Rockland County. The porposed improvements involve the reconstruction of the existing Cross Westchester Expressway in the Towns of Greenburgh and Harrison and the City of White Plains from the vicinity of the New York State Thruway easterly for about seven miles to the vicinity of Route 120. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand.

Alternatives to be given consideration include (1) maintaining the existing six-lane facility; (2) using alternative travel modes; (3) widening the existing six-lane highway to eight lanes; (4) a conventional highway alternative to provide adequate capacity; and (5) reconstructing the existing six-lane highway plus adding a High Occupancy Vehicle Facility to the center median area. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment and interchange modifications.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Also planned are early coordination and exchanges of information with the public and agencies through public information meetings, direct request to other agencies to become cooperating agencies, and early notification and solicitation with entities affected by the proposed action through the clearing-house process. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Harold J. Brown,

Federal Highway Administration Albany, New York.

[FR Doc. 89-11973 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; San Diego County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Ms. Suan Klekar, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915. Telephone: (916) 551-1307.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the California Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to construct an eight lane freeway from approximately Worthington Street/Sweetwater Road to State Route 94. Alternatives for this project are a "no blind" and several design variations including the possible use of two lanes for High Occupancy Vehicles (HOV).

A public meeting in San Diego County was held December 8, 1988 to solicit citizen input. Scoping meetings will be arranged with cooperating agencies and special interest groups upon request. In addition, a public hearing will be held. Public notice will be given as to the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program.)

Issued on May 9, 1989.

Michael A. Cook

District Engineer, Sacramento, California.

[FR Doc. 89-11972 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Monterey County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Monterey County, California.

FOR FURTHER INFORMATION CONTACT: Michael A. Cook, District Engineer, Federal Highway Administration, P.O.

Box 1915, Sacramento, California 95809. Telephone: (916) 551–1307.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the California Department of Transportation and Monterey County, will prepare an Environmental Impact Statement (EIS) on a proposal to improve highway facilities on State Highway Route 101 from 0.5 miles north of Boronda Road to 0.5 miles north of Crazy Horse Road in Monterey County, a distance of 7.2 miles. Route 101 within the proposed project limits is a four-lane divided expressway which does not meet current geometric or freeway design standards. The facility is currently operating between Level-of-Service D and E and carries both local and through trips since no parallel facility exists. Additional capacity is required to meet future travel demands within this corridor.

Alternatives under consideration are: (1) The "No Build" alternative which may include various operational and safety improvements at spot locations along the existing alignment; (2) upgrading existing Route 101 to full freeway status, acquisition of full access control, construction of new interchanges with local roads and improvements to the SR–156/101 interchange, the addition of two mainline lanes for a total of six lanes and upgrading the alignment; and (3) construction of approximately eight miles of four-lane (with provision for six lanes) freeway on new alignment east of existing Route 101.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Two public scoping meetings are scheduled to be held on May 23, 1989, the first at 3:00 p.m. at the Monterey County Library, Prunedale Branch (17822 Moro Road), and the second at 7:00 p.m. at the Prunedale School, Elementary (17719 Pesante Road). In addition, the project Public Awareness Program also includes a Citizens Advisory Task Force, a series of small-group public workshops, and a Public Hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on May 9, 1989.

Michael A. Cook

District Engineer, Sacramento, California.

[FR Doc. 89–11971 Filed 5–17–89; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Santa Clara County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Santa Clara County, California.

FOR FURTHER INFORMATION CONTACT: David L. Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915. Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and the City of San Jose, will prepare an Environmental Impact Statement (EIS) on a proposal to construct an interchange and frontage roads on State Route 17 at Lexington Reservoir, located south of the town of Los Gatos in Santa Clara County. The interchange and frontage roads would be constructed at or in the vicinity of one of the following existing roadways: Montevina/Alma Bridge Road, Black Road or Bear Creek Road. A "no-project" alternative will also be considered.

The action is being proposed to provide for safe access to and from State Route 17 from the above-listed roadways, and from the adjacent Lexington Reservoir County Park. State Route 17 is the primary highway which connects Santa Clara and Santa Cruz Counties; it is a 4-lane facility which carries a substantial volume of traffic, especially during weekday commute periods and during weekends when recreational activity is high.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A formal scoping meeting will be held at 7:15 p.m. on Thurday, June 1, 1989 at the Los Gatos Neighborhood Center, 208 East Main Street, Los Gatos, California. The draft EIS will be available for public and agency review prior to a public hearing on the draft EIS.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Agencies which have knowledge regarding historic resources which could be affected by this proposed action, or which are interested in the effects of the project on historic properties are requested to submit relevant information regarding such resources. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided previously in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued: May 10, 1989.

David L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 89–11976 Filed 5–17–89; 8:45 am]

BILLING CODE 4910–22–M

Commercial Motor Vehicle Safety Regulatory Review Panel

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) will hold a meeting on June 15 and 16, 1989, beginning both days at 9:00 a.m., in Washington, DC, at the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, DC, Room 4200.

SUPPLEMENTARY INFORMATION: The Safety Panel was established on June 18, 1985, in response to sections 207 to 209 of the Motor Carrier Safety Act of 1984, 49 U.S.C. App. 2506–08 (Supp. III 1985). See 50 FR 31452 (1985). The primary purpose of the Safety Panel is to review the compatibility of state and Federal motor carrier safety regulations affecting interstate commerce, and to make recommendations to the Secretary of Transportation, through the Administrator of the Federal Highway Administration, with respect to possible preemption of certain state laws or regulations.

States have provided considerable information to the Safety Panel to assist

in its review of approximately 73,000 state motor carrier safety laws and regulations. See 50 FR 1243 (1985) (notice of guidelines to states); 50 FR 7357 (1985) (notice of clarification of guidelines to states); and 51 FR 5565 (1986) (notice requesting recently enacted or promulgated laws or regulations). To further support this effort, the FHWA contracted with Dynamic Corporation, a consultant, to organize this material into state by state compilations and to provide a preliminary analysis of the scope and relative stringency of the various states' laws and regulations for the Safety Panel's use. The draft compilations of the states laws and regulations were sent to each state to verify their completeness and accuracy, and a notice was published in the Federal Register inviting the public to comment on them as well. See 51 FR 36830 (1986).

In February 1989, the Safety Panel's initial findings were sent to each state for their review. The comments of the individual states on the initial findings are now being received by the FHWA for the Safety Panel's review. These comments will be considered in the development of the Safety Panel's report to the Secretary.

Throughout this process, the Safety Panel has held public meetings to consider and evaluate this material. On June 15 and 16, 1989, the Safety Panel will hold its next meeting, both days beginning at 9:00 a.m., at the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC, room 4200.

The agenda for this meeting includes the following topics: The progress of States in adopting compatible safety regulations, the relationship of the Safety Panel's activities and the Motor Carrier Safety Assistance Program, and the development of the Safety Panel's report to the Secretary.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, Commercial Motor Vehicle Safety Regulatory Review Panel, Federal Highway Administration, HOA-1, Room 4218, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2238. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday.

Issued on: May 12, 1989.

R. D. Morgan,

Executive Director.

[FR Doc. 89-11851 Filed 5-17-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supp. to Dept. Circ.—Public Debt Series—No. 12-89]

Treasury Notes, Series S-1992

Washington, May 10, 1989.

The Secretary announced on May 9, 1989, that the interest rate on the notes designated Series S-1992, described in Department Circular—Public Debt Series—No. 12-89 dated May 4, 1989, will be 9 percent. Interest on the notes will be payable at the rate of 9 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-11907 Filed 5-17-89; 8:45 am]

BILLING CODE 4810-40-M

[Supp. to Dept. Circ.—Public Debt Series—No. 13-89]

Treasury Notes, Series B-1999

Washington, May 11, 1989.

The Secretary announced on May 10, 1989, that the interest rate on the notes designated Series B-1999, described in Department Circular—Public Debt Series—No. 13-89 dated May 4, 1989, will be 9 percent. Interest on the notes will be payable at the rate of 9 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-11908 Filed 5-17-89; 8:45 am]

BILLING CODE 4810-40-M

Fiscal Service

[Dept. Circ. 570, 1988—Rev., Supp. No. 15]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Southeastern Casualty and Indemnity Insurance Co., Inc.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Southeastern Casualty and Indemnity Insurance Company, Inc. under the United States Code, Title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 53 FR 25075, July 1, 1988.

With respect to any bonds currently in force with Southeastern Casualty and Indemnity Insurance Company, Inc., bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: May 12, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 89-11983 Filed 5-17-89; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1988—Rev., Supp. No. 16]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Southeastern Reinsurance Co., Inc.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Southeastern Reinsurance Company, Inc. under the United States Code, Title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 53 FR 25075, July 1, 1988.

With respect to any bonds currently in force with Southeastern Reinsurance Company, Inc., bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: May 12, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 89-11982 Filed 5-17-89; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; Grant Program; Central American Teacher Training Institute for Central American Educators

Overview

The United States Information Agency (USIA) is soliciting detailed proposals

from U.S. accredited institutions of higher education with exertise in the field of teaching English as a Foreign Language (EFL) and/or English as a Second Language (ESL) and special expertise in handling cross-cultural programs to conduct a Central American Teacher Training Institute (CATT) for approximately 30 Central American EFL teachers and teacher trainers.

A. General Description

Participants from Central American univerisities and other institutions with outstanding work and commitment in teaching EFL or training teachers in EFL will be selected by United States Information Service (USIS) staffs to participate in the Institute. CATT will provide participants with advanced training in English language skills, EFL teaching methodology, and give a structured exposure to American culture. Participants who are or will be engaged as teacher trainers or supervisors will receive intensive work in teacher education, evaluation, and supervision. Experience in EFL and a high level of English language skills will be a critical factor in the selection of the participants. The program should maintain a relative balance among discussion sessions, lectures, workshops, and practical experience. Lengthy lectures should not be the usual format.

B. Time Frame

The grant period should begin September 1, 1989 and end on or about February 25, 1990. The academic program should last six weeks beginning on or about Sunday, January 14, 1990, and end on or about Sunday, February 25, 1990. The participants will arrive directly at the campus site from their home country. The university program staff will be expected to make arrangements to have participants met upon arrival at the airport nearest the university campus. Few if any participants will have visited the United States previously. In view of this, an initial orientation to the United States and the campus should be considered an integral part of the institute and should be held on the first two or three days of the program.

C. Academic Program Objectives

The objectives of the Institute are to support and encourage the efforts of Central American countries to improve the quality of teaching English as a Foreign Language. The program should be designed for EFL teachers/teacher-trainers with responsibilities in teaching and curriculum planning and course and materials development. Emphasis should be placed on methodology, supervision, and teaching techniques in EFL which will meet the special needs of EFL teacher/teacher trainers from Central America.

Some specific areas to address in the Institute are:

1. EFL methodology in theory and practice; policy issues in the use of English as a medium of instruction for non-native English speakers; transition from mother tongue instruction to English.

2. Language enhancement in communication, pronunication, syntax, writing, and reading skills.

3. Enhancement of pedagogical skills, curriculum development, development of teacher-made materials; development of curriculum materials during the Institute which can be used in home country.

4. Development of supervisory skills in observation and evaluation of classroom teachers, training teachers to handle individual and small/large group needs.

5. For teacher trainers: Enhancement of teacher training skills; development of in-service training programs for teachers; designing and conducting future workshops to train EFL/ESL teachers.

6. Visits to on-going EFL–ESL classes in local educational or community centers, providing participants with opportunities to practice EFL/ESL skills.

7. Involving participants in American culture through community-cultural activities including interaction with Americans from a variety of backgrounds.

8. Review of various teaching materials, and guidance in learning how to make appropriate selections for EFL classes in home country.

9. Evaluation of the Institute.

D. Cultural Enhancement Programming Objectives

The objectives of this component are to provide the participants with both structured and self-directed activities designed to enhance their English language proficiency while exposing participants to a variety of American cultures and customs. The academic program should be complemented to ample time for interaction with American students, faculty, administrators, and the local community, to improve the participants' understanding of the United States. In this regard, the Institute should incorporate local community cultural activities, field trips to nearby places of local interest, home stays with families (other secondary educators if possible), and events to bring the participants into contact with Americans from a variety of backgrounds.

E. Requirements

Proposals should contain a detailed plan in response to the needs and priorities outlined above. The detailed narrative should outline the structure and organization of the Institute including a day-by-day agenda, and current curricula vitae of proposed faculty and consultants. It should also include a proposed list of appropriate books, reading or preparatory materails which would be sent to participants before their departure for the U.S. providing them with topics to be discussed, as well as practical suggestions for preparing for their stay at the university. Applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities or organizations. The overall quality and effectiveness of the Institute hinges upon good administrative and organizational capabilities to manage interactions between foreign educators and Americans. The proposal must clearly demonstrate quality on-site management capabilities for the academic and cross-cultural components of the Institute.

F. Budget Guidelines

The funds available for this program may not exceed $135,000. The proposal should be complemented by a detailed line-item budget outlining specific expenditures and source(s) from which funds are anticipated. Cost-sharing is encouraged. Included in the budget worksheet for each budget line-item should be an explanation detailing (in parentheses) how costs were computed in the following areas:

1. Salaries, benefits, and services (including support staff) for the program and other direct costs. Included should be budget explanations detailing how costs were computed, i.e. salaries should include position, annual salary, benefits, and per cent of services used for this program.

2. Administrative costs, office expenses, and any other direct costs covering the academic activities during the six-week university program.

3. Housing and board at the university; for example, faculty residences, graduate dormitories, home stay, or other accomodations if necessary. One working luncheon may be included.

4. Transportation costs for all travel during the course of the Institute. This includes international round trip

estimates for the participants and domestic and ground expenses such as covering the cost of renting a bus and hiring a driver to bring participants from airport to university, etc.

5. Modest per diem supplement at $130 per participant to cover incidental expenses for the six-week period of academic activity.

6. Cultural allowance per participant to be determined by the host institution to cover small out-of-pocket expenses for attending films, concerts, admissions fees to museums, historical homes etc.

7. Educational materials for participant's home institution at $150 per participant.

8. Book/Professional development costs at $100 per participant. This may include TESOL membership fees.

9. University contributions or cost sharing and/or private sector contributions.

10. Miscellaneous costs such as honoraria, certificates, support materials, etc.

11. Indirect costs which should be held to a minimum. A copy of the indirect cost rate of the cognizant should be included.

Some modifications may be necessary based on the final number of participants following the grant award.

G. Evaluation Criteria

A panel of senior USIA officers experienced in TEFL, the exchange of international educators, and Central American area studies will use the following criteria when evaluating proposals:

1. Quality and creative design of the Institute;

2. Quality, rigor, appropriateness of proposed syllabus to goals of the Institute;

3. Clear evidence of the ability to deliver a substantive academic and pedagogical EFL program;

4. Demonstrated high quality EFL/ESL programs—experience with Central America is desirable;

5. Provision for a useful evaluation at the conclusion of the Institute;

6. Evidence of strong on-site administrative and managerial capabilities for hosting international visitors with specific discussion of how managerial and logistical arrangements will be undertaken;

7. The experience of professionals and staff assigned to the Institute;

8. The availability of local and state resources for the orientation and intitute;

9. Access to EFL/ESL professionals and programs from various universities and organizations;

10. Cost-effectiveness of proposed program.

H. Agreement Dates

The agreement period should begin on September 1, 1989, about five months before the start of the academic program (January 14, 1990) for which only minimal administrative assistance costs will be allowed. The termination date should include a 60 to 90 day period to cover the required end-of-project report.

I. Mailing of the Proposal

Applicants should submit *12 copies each* of a 500 word summary, a proposal not to exceed 20 typed, double-spaced pages addressing the points outlined above and following the detailed budget guidelines. Interested institutions should request a USIA grant cover sheet, An Assurance of Compliance form, and Certification Regarding Drug-Free Workplace Requirements and Debarment from Program Officer at address below. Final proposals along with the forms requested must be received in the Agency by close of business June 9, 1989.

The proposed package should be submitted to: United States Information Agency (USIA), Office of Academic Programs, American Republics Branch, E/AEL, Room 246, 301 3th Street, SW. Washington, DC 20547, Attention: Ms. Paula Curry, (Telephone: 202/485–7398).

Guy S. Brown

May 10, 1989.

[FR Doc. 89–11951 Filed 5–17–89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Commission to Assess Veterans' Education Policy; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Commission to Assess Veterans' Education Policy, authorized by section 320 of Pub. L. 99–576, will be held in Suite 300 of the Postal Rate Commission, 1333 H Street, NW., Washington, DC 20268, on May 22, 1989, at 9 a.m. The purpose of this meeting will be to consider the Commission's reply to the Department's response to the Commission's report of August 29, 1988, making recommendations to the Secretary and the Congress on various aspects of the administration of veterans' education programs.

The meeting will be open to the public. Those wishing to attend should contact Ms. Babette V. Polzer, Executive Director, Commission to Assess Veterans' Education Policy (phone: (202) 233–6526). Due to unforeseen administrative delays, this notice will not appear prior to fifteen days of the date of the meeting.

Interested persons may attend or submit prepared statements for the Commission. Statements may be filed with the Executive Director for the Commission, c/o the Department of Veterans Affairs (226), 810 Vermont Avenue, NW., Room 424, Washington, DC 20420.

Dated: May 12, 1989.

By direction of the Secretary:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89–11845 Filed 5–17–89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 95
Thursday, May 18, 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 ELECTION COMMISSION

DATE AND TIME: Tuesday, May 23, 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 25, 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.
Draft Advisory Opinion 1989-5: The Honorable Richard Ray, United States House of Representatives.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-12111 Filed 5-16-89; 3:07 pm]
BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE 10:00 a.m., Wednesday, May 24, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: May 16, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-12116 Filed 5-16-89; 3:45 pm]
BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Change in Time and Subject

The previously announced closed meeting (**Federal Register**, Vol. 54, No. 86, page 19484, May 5, 1989) of the National Credit Union Administration scheduled for 9:00 a.m., Tuesday, May 16, 1989, was changed to 8:00 a.m., Tuesday, May 16, 1989.

The National Credit Union Administration Board also deleted the following item from the previously announced closed meeting on Tuesday, May 16, 1989.

Appeals of Regional Director's Denial of Federal Insurance.

The Board voted unanimously to delete this item from the closed agenda because consideration of the item would have been premature.

The previously announced items were:

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.

The meeting was held at 8:00 a.m., in the Filene Board Room, 1776 G Street, NW., Washington, DC.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone (202) 682-9600.

Becky Baker,
Secretary of the Board.

[FR Doc. 89-12109 Filed 5-16-89; 2:46 am]
BILLING CODE 7535-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Change in Subject of Meeting

The following item was deleted from the previously announced open meeting (**Federal Register**, Vol. 54, No. 86, page 19484, May 5, 1989) of the National Credit Union Administration on May 11, 1989.

Under Item Number 5. Regulatory Review, NCUA's Rules and Regulations, Proposed Amendments to:

d. Section 704.8 Corporate Credit Unions Ownership of Fixed Assets.

Chairman Jepsen announced that the item was withdrawn by staff for further study.

Earlier announcement of this change was not possible.

The previously announced items were:

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.

The meeting was held at 1:00 p.m., in the Lincoln Hilton, Lincoln, Nebraska.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone (202) 682-9600.

Becky Baker,
Secretary of the Board.

[FR Doc. 89-12108 Filed 5-16-89; 2:46 am]
BILLING CODE 7535-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m. Tuesday, May 23, 1989.

PLACE: Conference Room 8A, B, C, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: Aloha Airlines, Inc., Flight 243, B737-200, N73711, Maui, Hawaii, April 28, 1988.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,
Federal Register Liaison Officer.
May 12, 1989.

[FR Doc. 89–12117 Filed 5–16–89; 3:57 pm]
BILLING CODE 7533–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 22, 1989.

A closed meeting will be held on Wednesday, May 24, 1989, at 2:30 p.m. An open meeting will be held on Thursday, May 25, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 24, 1989, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Institution of injunction actions.
Consideration of *amicus* participation.
Reorganization proceeding.

The subject matter of the open meeting scheduled for Thursday, May 25, 1989, at 10:00 a.m., will be:

Consideration of whether to issue a release adopting or withdrawing proposed Rule 19c–5 regarding the multiple trading of options on exchange-listed stocks. The Commission also will consider whether to issue a staff paper concerning the market structure issues associated with multiple options trading. For further information, please contact Thomas Gira at (202) 272–2827.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Herb Janick at (202) 272–2200.

Jonathan G. Katz,
Secretary.
May 15, 1989.

[FR Doc. 89–12074 Filed 5–16–89; 2:46 pm]
BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 54, No. 95
Thursday, May 18, 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 EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA Nos.: 84.133A, 84.133D, and 84.133E]

National Institute on Disability and Rehabilitation Research; Invitation of Applications for New Awards Under Certain Programs for Fiscal Year 1989

Correction

In notice document 89-9805 beginning on page 17907 in the issue of Tuesday, April 25, 1989, make the following correction:

On page 17909, in the first table, in the last column, the first entry should read "36".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

[Revision 3]

RIN 3245-AB 77

Surety Bond Guarantee Regulations

Correction

In rule document 89-10520 beginning on page 19544 in the issue of Monday, May 8, 1989, make the following corrections:

§ 115.3 [Corrected]

1. On page 19547, in the 3rd column, in § 115.3(a), in the 20th line "or" should read "on".

§ 115.4 [Corrected]

2. On page 19549, in the 3rd column, in § 115.4, in the definition for "Obligee", in the 14th line, "bond" should read "bound".

3. On the same page and in the same column and section, in the definition for "Premium", in the first line, "in" should read "an".

§ 115.5 [Corrected]

4. On page 19550, in the third column, in § 115.5(d), in the second line "or" should read "on".

§ 115.6 [Corrected]

5. On page 19550, in the third column, in § 115.6(c)(1), in the sixth line, "certification" should read "certifications".

6. On the same page, in the third column, in § 115.6(c)(3), in the next to last line, after "contract", insert "amount".

§ 115.7 [Corrected]

7. On page 19551, in the first column, in § 115.7(b), in the 8th line, "underwriting" should read "Underwriting" and in the 12th line, "for" should read "all".

§ 115.8 [Corrected]

8. On the same page, in the third column, in § 115.8(a), in the fifth and sixth lines "authorized ('authority officer')" should read "authority ('authorized officer')".

§ 115.11 [Corrected]

9. On page 19552, in the first column, in § 115.11(a)(2), in the second line, after "contests" insert "and" and in the third line, "acceptance" should read "acceptable".

10. On the same page, in the second column, in § 115.11(b), in the 15th line, after "section," insert a closing parenthesis.

11. On the same page, in the same column, in § 115.11(c), in the first line, *"Underwriting"* was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-1]

RIN 2120-AD08

Proposed Establishment of the Charlotte Terminal Control Area and Revocation of the Charlotte/Douglas International Airport Airport Radar Service Area; North Carolina

Corrections

In proposed rule document 89-11018 beginning on page 19860 in the issue of Monday, May 8, 1989, make the following corrections:

1. On page 19862, in the first column, in the first paragraph, in the fourth line, "72.12" should read "71.12".

2. On the same page, in the 2nd column, in the 3rd complete paragraph, in the 12th line, "Establishing" should read "Establishment".

3. On the same page, in the 3rd column, in the 1st complete paragraph, in the 10th line, "VOR" should read "VFR".

4. On page 19864, in the first column, in the first complete paragraph, in the sixth line, "annot" should read "cannot".

§ 71.403 [Corrected]

5. On the same page, in the third column, in § 71.403, under "Primary Airport", in the first line, "Air" should read "Airport".

6. On the same page, in the same column, in § 71.403, under "Boundaries", in the second line, "an" should read "and".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-26; Docket IRA-42]

California Department of Motor Vehicles Regulations on Training Requirements for Operators of Vehicles Carrying Hazardous Materials

Correction

In notice document 89-9555 beginning on page 16314 in the issue of Friday, April 21, 1989, make the following corrections:

1. On page 16314, in the 1st column, under *Ruling*, in the 21st line, "inconsistent" was misspelled.

2. On the same page, in the same column, in the same paragraph, in the 26th line, insert a comma after "regulations".

3. On page 16316, in the first column, in the second complete paragraph, in the first line, "contents" should read "contends".

4. On page 16321, in the first column, under "1. Definitions", in the first paragraph, in the third line, and in the

second paragraph, in the fifth line, "DMW" should read "DMV".

5. On the same page, in the same column, in the last paragraph, in the last line, "makings" should read "markings".

6. On page 16322, in the first column, in the first complete paragraph, in the third line, "training" was misspelled.

7. On the same page, in the third column, in the first complete paragraph, in the ninth line, "that" should read "the".

8. On the same page, in the same column, in the second complete paragraph, in the first line, "is" should read "its".

10. On the same page, in the same column, in the last complete paragraph, in the 17th line, "and" should read "any".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 240

Indorsement and Payment of Checks Drawn on the United States Treasury

Correction

In proposed rule document 89-5584 beginning on page 10366 in the issue of Monday, March 13, 1989, make the following correction:

§ 240.9 [Corrected]

On page 10370, in the second column, in § 240.9(a)(2), in the first line, insert "not" between "shall" and "be".

BILLING CODE 1505-01-D

Federal Register

Thursday
May 18, 1989

Part II

Department of Agriculture

Farmers Home Administration

7 CFR Part 1822 et al.

Rural Cooperative Housing Loans; Proposed Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1822, 1930, 1944, 1951 and 1965

Rural Cooperative Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations concerning rural cooperative housing loans. The action is taken because of changes in the administration of the program, the necessity to explain aspects of cooperative housing which are not now covered, and the need to eliminate certain requirements in the regulations which are no longer appropriate and whose continued requirement impedes the efficient administration of the program. It is also taken to strengthen the Agency's effort to assist distressed communities and rural areas which have significant populations of poor and disadvantaged persons. The intended effect is to clarify and update the regulations and provide needed instruction to FmHA field staff in the processing of rural cooperative housing preapplications.

DATES: Comments must be received on or before July 17, 1989.

ADDRESSES: Submit written comments in duplicate to the office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to the notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this proposed rulemaking have been submitted to OMB for review under 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gail McCowan, Loan Specialist, Multi-Family Housing Processing Division, Room 5337, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, Telephone Number: (202) 382-1623.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "non major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government Agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Farmers Home Administration, has determined that the proposed action will not have a significant impact on a substantial number of small entities because the proposed revisions provide clarification of existing regulations and the annual volume of the program is anticipated to continue to decline. FmHA anticipates funding approximately 5 applications nationwide.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and according to the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.415 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Catalog of Federal Domestic Assistance Titles and Numbers: 10.415 Rural Rental Housing Loans.

General Information

This action is being taken to include in Subpart E of 7 CFR Part 1944 provisions for the financing of cooperative housing loans formerly contained in Subpart F of 7 CFR Part 1822, Rural Cooperative Housing Loans, which is being removed.

Subpart C of Part 1930

Subpart C to Part 1930 and its exhibits are being amended to correspond to changes being made to Subpart E of Part 1944 relative to the financing of cooperative housing projects. In general, the terms member, comember, cooperative, cooperative representative, occupancy, occupancy charge, occupancy agreement, RCH, rental or rent, board or board of directors, person, contract, are being inserted to differentiate between rental and cooperative housing and the terms rent or rental, tenant, and lease are being deleted from particular areas where the language is suitable to both types of housing. Except for paragraph II of Exhibit B to this Subpart, these editorial changes are not shown in this publication but will be included when the regulation is published for final rule.

(1) Definitions for adviser to the board, consumer cooperative, member, occupancy agreement, and patronage capital refund have been added; language has been included which discusses how supervisory management relates to cooperatives.

(2) Exhibit B to Subpart C is amended to include a definition for limited equity and management reserve; it briefly describes the responsibilities of cooperative board, committees, and members, discusses the role of the adviser to the board in the management of a cooperative, and outlines various other provisions relating to the management, occupancy, and terms of the occupancy agreement.

(3) Exhibit B-1 to Subpart C is amended to define the monetary responsibilities of cooperative members and their role in the management of the cooperative.

(4) Exhibit B-2 to Subpart C is amended to specify how the adviser to the board will be chosen.

(5) Exhibit C to Subpart C is amended to define how changes in the cooperative occupancy charges will be processed.

(6) Exhibit F to Subpart C is amended to include the functions necessary for FmHA to successfully supervise a cooperative.

(7) Exhibit H to Subpart C is amended to define basic occupancy charge and market occupancy charge and to exempt patronage capital contributions from the requirement that all income generated by the cooperative must be placed in the general operating account.

Subpart E to Part 1944

Subpart E to Part 1944 and its exhibits are being amended to reflect the

inclusion of financing cooperative housing projects. Editorial changes are being made to insert the terms "cooperative," "member," and "occupancy rate" where appropriate and to delete the terms "rental," "tenant,"and "rental rate or rent" when the language of the regulation pertains to both types of housing projects. Primary changes proposed for Subpart E of Part 1944 are:

(1) Section 1944.205 has been expanded to include the definitions of Adviser to the board, Articles of incorporation, Bylaws, Limited equity, Member, Occupancy agreement, Patronage capital refund, and Subscription agreement.

(2) Section 1944.211(a)(11) outlines the eligibility requirements for a cooperative.

(3) Section 1944.212(o) limits the use of 502 inventory houses to a particular configuration.

(4) Section 1944.213(a) states that all cooperative housing loans will require National Office authorization.

(5) Section 1944.215(g) details the different forms of management for cooperatives.

(6) Section 1944.215(h) requires the member of a cooperative to pay a membership fee.

(7) Section 1944.215(i) restricts participation to cooperatives that limit amount of equity paid to members.

(8) Section 1944.215(j)(4) specifies that rental assistance will not be used to pay the member's management reserve charge.

(9) Section 1944.231(a)(4) states that cooperative housing preapplications are exempt from the preapplication ranking criteria.

(10) Section 1944.231(b)(3) states that all cooperative housing preapplications, regardless of amount, will be submitted to the National Office and that RCH loans will be funded from a National Office cooperative housing reserve.

(11) Section 1944.232(a)(2)(i) requires that rental assistance payments should be directed to either the member or to the board of directors.

(12) Section 1944.235(h) requires that adequate marketing efforts for cooperative housing projects will be made during the preapplication stage.

(13) Exhibits to Exhibit A are renumbered A–1 through A–9 to include a new Exhibit A–4, Cooperative Housing Survey.

(14) Paragraph I to Exhibit A addresses the addition of cooperative housing availability to communities.

(15) Paragraph II of Exhibit A requires that a prospective cooperative member read and understand responsibilities outlined in What is Cooperative Housing?

(16) Paragraph III of Exhibit A states that all cooperative proposals will be sent to the National Office.

(17) Paragraph IVB of Exhibit A states that a sponsor may act for the cooperative.

(18) Paragraph IVB of Exhibit A states that separate bylaws have been provided for cooperative housing organizations.

(19) Paragraph IVB3 of Exhibit A has been added to outline, in subparagraphs a through d, the composition of the membership of cooperative and board of directors, responsibilities of board of directors, the requirement to maintain a list of names and addresses of members, the deposit of membership fee and when it can be refunded to member.

(20) Paragraph IVB15 of Exhibit A outlines, in subparagraphs a through c, the necessity to form cooperative committees and the types of committees in order to self-manage, and that the cooperative will hire professional management if it fails to manage itself.

(21) Paragraph IVB16(2) of Exhibit A specifies that only the initial income will determine occupancy requirements for cooperative members.

(22) Paragraph IVB17 of Exhibit A outlines the general responsibilities of the cooperative board of directors.

(23) Paragraph IVB18 of Exhibit A outlines the general responsibilities of the adviser to the cooperative board of directors.

(24) Paragraph IVB19 of Exhibit A describes the management reserve to be charged by the cooperative and how it will be applied as patronage capital to each member at the end of the year or be used to pay for professional management.

(25) Paragraph IVB21 of Exhibit A states that Exhibit I will be used as a guide for developing an occupancy agreement.

(26) Paragraph IVB22 of Exhibit A requires that the Affirmative Fair Housing Marketing Plan will be discussed at preapplication stage.

(27) Exhibit A–1, Legal Services Agreement, is changed to include reference to cooperative and board of directors and to require the attorney furnish advice and assistance regarding special tax treatment applicable to housing cooperatives.

(28) Paragraph IB of Exhibit A–7 outlines the requirement for cooperative members to provide a financial statement.

(29) Paragraph IC of Exhibit A–7 outlines the requirement for obtaining the signature and certification of all persons interested in becoming a cooperative member.

(30) Paragraph ID of Exhibit A–7 requires the submittal of an Affirmative Fair Housing Marketing Plan.

(31) Paragraph IIG of Exhibit A–7 states that market feasibility will be evidenced by names and addresses of prospective members.

(32) Paragraph 6 of Exhibit A–9 requires the cooperative to provide names and addresses of prospective members and that it may collect the membership fee, or a partial deposit, at this time.

(33) Paragraph 9c of Exhibit A–9 states that the cooperative budget should provide for accumulating a management reserve at a rate commensurate with management fees appropriate to the area.

(34) Paragraph 12 of Exhibit A–9 requires that the cooperative provide a statement that it will hire professional management if it has been unable to demonstrate an ability to manage itself.

(35) Paragraph 16 of Exhibit A–9 requires an executed copy of a limited equity agreement.

(36) Paragraph 17 of Exhibit A–9 requires a completed subscription agreement.

(37) Exhibit C, Articles of Incorporation, has been changed to include reference to cooperative and to added articles pertaining to cooperatives such as: Article Eight states that net operating funds will be accumulated in an interest-bearing account but assigned to each member as patronage capital; Article Ten states that all assets of the cooperative except patronage capital and membership fees shall, upon dissolution, be distributed to another nonprofit or municipal corporation and used for same purpose as cooperative; and Article Eleven states that prior to dissolution the member may terminate membership and receive a refund of membership fee and the patronage capital which has accrued to his/her account provided that the member is not delinquent and that all charges have been paid.

(38) Exhibit D–1 has been added to provide for cooperative bylaws.

(39) Exhibit E has been added to outline qualifications for an adviser to the board.

(40) Exhibit E–1 has been added to outline the relationship of adviser to members.

(41) Exhibit F has been added to outline adviser responsibilities.

(42) Exhibit G has been added to provide for cooperative limited equity agreement.

(43) Exhibit H has been added to provide for cooperative subscription agreement.

(44) Exhibit I has been added to provide for cooperative occupancy agreement.

Subpart L to Part 1944

Subpart L to Part 1944 is being amended to correspond to changes being made to Subpart E of Part 1944 relative to the financing of cooperative housing projects.

(1) Section 1944.551 is revised to include Rural Cooperative Housing (RCH).

(2) Section 1944.552 is revised to include the definition of consumer cooperative.

Subpart K to Part 1951

Subpart K to Part 1951 is being amended to correspond to changes being made to Subpart E of Part 1944 relative to the financing of cooperative housing projects. These changes include the interpretation of "tenant" to also mean "RCH member," and allows project late fees to be paid from project income.

Subpart B to Part 1965

Subpart B to Part 1965 is being amended to correspond to changes being made to Subpart E to Part 1944 relative to the financing of cooperative housing projects. Editorial changes are being made to insert the terms "cooperative," "member," and "occupancy charge." A statement is made that cooperatives will only be transferred to provide rental units for low-income persons.

List of Subjects

7 CFR Part 1822

Aged, Loan programs—Housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

7 CFR Part 1951

Account servicing, Low and moderate income housing loans—Servicing, Mortgages.

7 CFR Part 1965

Low and moderate income housing—Rental.

Accordingly, as proposed, Chapter XVIII Title 7, Code of Federal Regulations is amended as follows:

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart F—Rural Cooperative Housing Loans

1. The authority citation for Part 1822 continues to read as follows:

Authority: 42 U.S.C. 1480, 7 CFR 2.23; 7 CFR 2.70, unless otherwise noted.

Subpart F—[Removed and Reserved]

1a. Subpart F (consisting of §§ 1822.231 through 1822.245) of Part 1822 is removed and reserved.

PART 1930—GENERAL

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. The authority citation for Part 1930 is revised to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 17 CFR 2.23; 7 CFR 2.70.

3. Section 1930.102 is revised to read as follows:

§ 1930.102 Definitions.

(a) *Adviser to the Board.* An individual or organization who will work with and provide guidance to a cooperative board.

(b) *Borrowers.* "Borrowers" means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations and other organizations and who have received a loan or grant from FmHA for LH, RRH, RCH, or RHS purposes.

(c) *Consumer Cooperative.* A corporation which

(1) Is organized under the cooperative laws of a State or Federally recognized Indian tribe;

(2) Will own and operate the housing on a cooperative basis solely for the benefit of the members;

(3) Will operate at cost and, for this purpose, any patronage refunds accruing to members in accordance with Subpart E to Part 1944 will not be considered gains or profits; and

(4) Will restrict membership in the housing to eligible persons and, to any extent the cooperative and FmHA permit, to others in special circumstances.

(d) *District Director.* For the purpose of this subpart, the term also includes the Assistant District Director, and other qualified District Staff who may be delegated responsibilities according to § 1930.143 of this subpart and the provisions of Subpart F of Part 2006 which is available in any FmHA office. In the case of LH loans still being serviced in the County Office, this definition also includes qualified County Office staff. This definition also includes the Area Loan Specialists in Alaska, Island Directors in Hawaii, Directors of Western Pacific Territories, and other qualified staff members in Alaska, Hawaii, and Western Pacific Territories, respectively.

(e) *FmHA.* "FmHA" means the United States of America acting through the Farmers Home Administration; it includes FmHA's predecessor agencies.

(f) *Governing Body.* "Governing Body" means those elected or appointed officials of an organization or public agency type borrower responsible for the operations of the project.

(g) *Management.* "Management" is the overall direction given by the borrower or the borrower's agent to meet the needs of the tenants or members, maintain the project, and provide sound and economical project operation.

(h) *Member.* A person who has executed documents pertaining to a cooperative housing type of living arrangement and has made a commitment to upholding the cooperative concept.

(i) *Occupancy Agreement.* A contract setting forth the rights and obligations of the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing.

(j) *OGC.* "OGC" means the Regional Attorney or the Attorney in Charge in the field office of the Office of the General Counsel of the United States Department of Agriculture.

(k) *OIG.* "OIG" means the Office of Inspector General of the United States Department of Agriculture.

(l) *Patronage Capital Refund.* Amounts received by the cooperative in excess of operating costs and expenses which have been assigned to members' patronage capital accounts each year of membership in the cooperative.

(m) *Project.* A project is the total number of rental or cooperative housing units in one community such as a densely settled area, town or village and operated under one management plan

with one loan agreement/resolution. The rental units may have been developed originally with separate initial loans and separate loan agreements/resolutions, now consolidated into one operational project under § 1965.68 of subpart B of Part 1965 of this chapter.

(n) *State Director.* For the purpose of this subpart, State Director also includes the Rural Housing Chief, Multiple Family Housing Coordinator, Rural Housing Specialist, and other qualified State staff when delegated responsibilities under this subpart according to § 1930.143 and the provisions of Subpart F of Part 2006 which is available in any FmHA office.

(o) *Supervision.* "Supervision" includes the broad scope of FmHA guidance available to assist borrowers to carry out the objectives of the loan and comply with FmHA regulations.

4. Section 1930.110 is amended by revising the introductory text, and by revising paragraph (b)(6) to read as follows:

§ 1930.110 Methods of supervision.

Supervisory methods used by FmHA employees include organizational and development planning; property management planning; affirmative marketing; construction conferences; longterm, annual, and other periodic planning and evaluation; accounts, budgets, and records inspections and guidance; project inspections; attendance at membership and governing body meetings; periodic group meetings with borrowers; analysis of accounting, budgets, and audit reports, guidance by memorandums; and similar activities. Supervision of cooperative borrowers will include coordination with the adviser to the board.

* * * * *

(b) * * *

(6) A requirement that the borrower contract with a management firm with proven background and/or experience in property management. In the case of cooperative housing, this stipulation will apply only when it has been determined that the cooperative is unable to manage itself.

* * * * *

5. Section 1930.119 is amended by revising paragraph (b)(1) to read as follows:

§ 1930.119 Supervisory visits and inspections.

* * * * *

(b) * * *

(1) Supervisory visits will be made when necessary to assure compliance with FmHA policies and objectives. A District staff person or other FmHA authorized person will perform a post rent-up or occupancy visit before the end of the first 90 days of operation; and a thorough supervisory visit at the end of the first year of operation and at least every three years thereafter at each project. More frequent visits to cooperatives should be scheduled as needed. Planned visits will be included in the monthly work calendar. The visit shall be conducted with the borrower and/or the borrower's designated representative (see Guide Letter 1930–2 for borrower notification). Exhibits F and G of this subpart should be used to assist in the preparation, completion, and follow-up of visits. For small rental projects consisting of only a few units (usually 1 to 3), the degree of completion of Exhibits F and G may be minimized. Supervisory visits to such projects are required only once every three years and should concentrate on tenant eligibility, maintenance, insurance coverage and status of loan payments.

* * * * *

6. Exhibit A to Subpart C is amended by revising the heading to read as follows:

Exhibit A—Steps for FmHA Personnel in Conducting Annual Analysis of Rental and Cooperative Operations

* * * * *

7. Exhibit B to Part 1930 is amended by revising paragraphs II, V D 2, V E 2, VI B 1 c, VI B 2 a, VI B 6 a, VI C 2, the introductory text of paragraphs VIII, VIII A, VIII B, and VIII B 3, the first sentence of paragraph VIII B 5, VIII C 13, 18, 19 and 21, the introductory text of paragraph VIII F, VIII F 8 j, VIII G 1, VIII G 2 a, VIII G 3, IX B, XIII B 1 c, XIII B 2 a (3) and (4), XIII B 2 d, the heading of paragraph XIV, XIV A 4, and XIV B 1 b; and by adding paragraphs III D 3, III E 5 and 6, and XIII B 2 e to read as follows:

Exhibit B—Multiple Housing Management Handbook

* * * * *

II Definitions

A. *Adjusted Annual Income.* This is the income of the household members, who live or propose to live in the unit for the next 12 months (including spouse or children of an elderly family in nursing homes or hospitals who would otherwise live in the unit), excluding:

1. $480 for each member of the family residing in the household (other than the tenant, co-tenant, member or co-member, or spouse of either, or foster children) who is under 18 years of age; or who is 18 years of age or older and is disabled, handicapped or a full-time student. The student must carry a subject load considered full time by the educational institution attended.

2. $400 for any elderly family;

3. Total medical expenses in excess of 3 percent of annual family income may be deducted for any elderly family. The term "total medical expenses" includes:

a. Medical expenses the tenant or member anticipates incurring over the 12 months following the effective date of the certification;

b. Medical expenses not covered by insurance;

c. Examples of medical expenses are dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, the cost of a live-in resident assistant, monthly payments required on accumulated major medical bills including that portion of the spouse's or children nursing home care paid from tenant or member family income(s).

d. Reasonable attendant care and auxiliary apparatus expenses described in paragraphs II 4 a and II a4 b of this exhibit for each handicapped member of the family to the extent needed to enable any family member (including such handicapped member) to be employed.

4. Total handicap assistance expense in excess of 3 percent of annual family income may be deducted for any nonelderly family following the same guidelines in paragraphs II 3 a and II a3 b of this exhibit to the extent needed to enable any family member (including the handicapped or disabled family member) to be employed. Handicap assistance expense includes:

a. That portion of attendant care attributable to specialized medical reasons (the portion attributable to companionship is not counted).

b. Auxiliary apparatus including but not limited to wheelchairs, oxygen equipment, reading devices for the visually handicapped and the cost of equipment added to cars and vans to permit their use by the handicapped or disabled family member proportionate to the amount of use by such persons.

5. The amounts paid by the family for the care of minors under 13 years of age may be deducted. Deductions for these expenses are permitted only when such care is necessary to enable a family member to further his or her education or to be gainfully employed, including the gainful employment of the disabled or handicapped family member. When the deduction is to enable gainful employment the amount may not exceed the amount of income received from such employment. When the deduction is to facilitate further education, the amount must not exceed a sum reasonably expected to cover class time and travel time to and from classes. (Child support payments made on behalf of a minor child who does not reside in the unit my not be deducted as a child care expense.)

B. *Adjusted Monthly Income.* This is the amount obtained by dividing the adjusted annual income by 12.

C. *Annual Income.* Annual income is the gross amount of income to be received by all members of the household to be in residence during 12 months following the effective date of Form FmHA 1944–8, "Tenant Certification."

1. *Income Included.* The following are included when determining annual income:

a. The gross amount (before any deductions) of wages and salaries, overtime pay, commissions, fees, tips, and bonuses of all members of the household.

b. The net income from operations of a business or profession or from rental of real or personal property. Expenditures for business expansion or amortization of indebtedness are not considered in the computation of net income. Net losses will be completed as zero. Deductions from gross business or rental income to arrive at net income may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the trade or business of the adult household members under the straight line method of depreciation. An itemized schedule must be provided in support of any deductions from gross income made under the provisions of this section. The schedule should be consistent with the amount of depreciation permitted for these items for Federal income tax purposes under the straight line method of depreciation.

c. Interest, dividends, and other income from net family assets as defined in paragraph II W of this Exhibit. On contracts for sale of real estate, deeds of trust or mortgages held by the applicant, tenant or member only the interest portion of the monthly or annual payments received by the applicant, tenant, or member is included as income.

d. The full amount of periodic payments received from Social Security (including Social Security payment received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits (except lump sum settlements) and other similar types of periodic receipts.

e. Payments in lieu of earnings, such as unemployment and disability compensation, worker compensation and severance pay.

f. Periodic and determinable allowances, such as alimony and child support payments, which the applicant, tenant, or member can reasonably expect to receive.

g. Regularly recurring contributions or gifts received from persons not residing in the dwelling.

h. Any amount of education grants or scholarships or Veterans Administration benefits on behalf of tenant, co-tenant, member, co-member, applicant, or other adult that exceeds expenses for tuition, fees, books and equipment.

i. All regular pay, special pay (except hazard duty pay for persons exposed to hostile fire) and allowances of a member of the armed forces who is head of the family or spouse, whether or not that family member lives in the unit.

j. Public Assistance. If the public assistance payment includes an amount specifically designated for shelter and utilities and that amount is subject to adjustments by the Public Assistance Agency according to the actual cost of shelter and utilities, the amount of public assistance income to be included as income shall consist of:

(1) The total amount of the public assistance, minus the amount specifically designated for shelter and utilities; plus

(2) The maximum amount which the Public Assistance Agency could in fact allow the family for shelter and utilities.

Example

Total Grant	$300
Amount specifically designated for shelter and utilities	−150
Amount of grant excluding shelter and utility allowance	150
The maximum the agency could provide for this family for shelter and utility allowance	+180
Amount per month to be included in Annual Income	$330

2. *Exempted Income.* The following are not included in annual income:

a. Income of dependent minors under 18 years of age except as specified in paragraph II C 1 d of this Exhibit. (Tenant, co-tenant, member, co-member or spouse of either may never be considered minors.)

b. In the case of contracts for sale of real estate, mortgages or Deeds of Trust held by the tenant, co-tenant, member or co-member, the principal portion of the payments received by the tenant, co-tenant, member, or co-member.

c. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

d. Payments received for the care of foster children.

e. Casual, sporadic or irregular gifts.

f. Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard or worker compensation policies, and settlements for personal or property losses.

g. Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses. Medical expenses may include those expenses incurred by disabled or handicapped residents so that they may live independently (e.g., attendant care).

h. Amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books, and equipment. Any amounts of such scholarships or veterans payments, which are not used for above purposes and are available for subsistence, are considered to be income of tenant, co-tenant, member- co-member, or applicant.

i. Student loans.

j. The hazard duty pay to a service person of a household or spouse away from home and exposed to hostile fire.

k. Payments received pursuant to participation in the following programs:

(1) Programs under the Domestic Volunteer Service Act of 1973 including, but not limited to, the National Older Americans Volunteer Programs (OAVP) of the Federal Action Agency for persons age 60 and over including the:

(i) Retired Senior Volunteer Program (RSVP).

(ii) Foster Grandparent Program (FGP).

(iii) Senior Companion Program (SCP).

(iv) Older American Committee Service Program.

(2) National Volunteer Antipoverty Programs such as VISTA, Peace Corps, Service Learning Program and Special Volunteer Programs.

(3) Small Business Administration Programs such as the National Volunteer Program to Assist Small Business and Promote Volunteer Service to Persons with Business Experience, Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and,

(4) Title V—Community Service Employment for Older Americans which include:

(i) Senior Community Service Employment Program

(ii) National Caucus Center on Black Aged

(iii) National Urban League

(iv) Association National Pro Personas Mayores

(v) National Council on Aging

(vi) American Association of Retired Persons

(vii) National Council of Senior Citizens

(viii) Green Thumb.

l. Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

m. Payments received under the Alaska Native Claims Settlement Act.

n. Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes.

o. Payments or allowances made under the Department of Health and Human Services Low-Income Home Energy Assistance Program.

p. Payments received from the Job Training Partnership Act.

q. Income derived from the disposition of funds of the Grand River Bank of Ottawa Indians.

r. The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims, or from funds held in trust for an Indian tribe by the Secretary of the Interior.

s. Any funds which a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits to which the recipient would otherwise be entitled.

D. *Borrowers.* "Borrowers" means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations and other organizations and have received a loan or grant from FmHA for LH, RRH, RCH, or RHS purposes.

E. *Caretaker.* The individual(s) employed by the borrower or the management agent as specified in the management plan to handle normal maintenance and upkeep of the project.

F. *Chore Service Worker.* An individual who provides intermittent assistance essential to the well being of a tenant or member whose services are compensated by

a Federal, State, or local assistance program. A chore service worker will not be a resident of the tenant or member's living unit.

G. *Congregate Housing.* Housing that affords an assisted independent living environment that offers the elderly, disabled or handicapped person who may be functionally impaired or socially deprived, but in good health (not acutely physically ill), the residential accommodations, central dining facilities, related facilities, and supporting service(s) required to achieve, maintain, or return to a semi-independent life style and prevent premature or unnecessary institutionalization as they grow older. Congregate housing also includes:

1. Housing which has complete kitchen facilities in each unit. However, some or all of the units may have limited kitchen facilities such as a cooktop with a small oven and a refrigerator. In the case of group living arrangements, each single family dwelling is considered a unit.

2. A group living arrangement where one or more elderly, disabled or handicapped persons may share living space within a rental unit and in which a resident assistant is required. Such housing may be one or more single family dwellings or a multi-unit structure.

H. *Domestic Farm Laborers.* Persons who receive a substantial portion of their income as laborers on farms in the United States, Puerto Rico, or the Virgin Islands and either (1) are citizens of the United States, or (2) reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, and may include the immediate families of such persons, as further defined in Subpart D of Part 1944 of this chapter.

I. *Elderly (Senior Citizen).*

A person who is at least 62 years old. The term elderly (senior citizen) also means persons with the following handicaps or disabilities, regardless of age:

1. *Handicapped.*

a. Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which:

(1) Has lasted or can be expected to last for a continuous period of not less than 12 months, or which can be expected to result in death;

(2) Substantially impedes the ability to live independently; and

(3) Is of such a nature that such ability could be improved by more suitable housing conditions.

b. In the case of a blind person who is at least 55 years old (within the meaning of "blindness" as determined in section 223 of the Social Security Act), is unable because of the blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

2. *Disabled.* In the case of developmental disability, a person with a severe, chronic disability which:

a. Is attributable to a mental or physical impairment or combination of mental or physical impairment; and

b. Was manifested before age 22; and

c. Is likely to continue indefinitely; and

d. Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

(1) Self care,

(2) Receptive and expressive language,

(3) Learning,

(4) Mobility,

(5) Self-direction,

(6) Capacity for independent living,

(7) Economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

J. *Elderly Family.* A household where the tenant, co-tenant, member, or co-member is at least 62 years old, disabled or handicapped as defined in paragraph III of this Exhibit. An elderly family may include a person(s) younger than 62 years of age who is essential to the elderly, handicapped or disabled person's care and well-being. [To receive an elderly family deduction the elderly, disabled or handicapped person must be the tenant, co-tenant, member or co-member.]

K. *Eligibility Income.* The calculated adjusted annual income which is compared to the income limits in Exhibit C to Subpart A of Part 1944 of this chapter.

L. *Forms Manual Insert FMI.* A type of directive which includes a sample of the form and complete instructions for its preparation, use and distribution.

M. *Household.* One or more persons who maintain or will maintain residency in one rental or cooperative unit, but not including a resident assistant or chore service worker.

N. *LH* means Farm Labor Housing loans and/or grants.

O. *Limited Equity.* A limitation on equity in the cooperative housing that may accrue to the benefit of a member (person or household) and is further described in Subpart E to Part 1944.

P. *Low-Income Household.* A household having an adjusted annual income within the maximum low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

Q. *Management Agent.* The firm or individual engaged by the borrower to manage the project in accordance with a written agreement.

R. *Management Fee.* The compensation for providing overall management services for a Multiple Family Housing (MFH) project. The fee is compensation for the time, expertise and knowledge required to direct and oversee the present and future operation of the project. Project management fees may include the cost of day-to-day reasonable management activities of the project such as (1) developing and modifying operating budgets, (2) renting the units, (3) collecting the rent, (4) preparing reports to FmHA, (5) normal bookkeeping, (6) maintaining tenant or member records, (7) arranging for the proper maintenance of the project, and (8) making inspections, etc. A management fee does not include the compensation paid to a site manager.

T. *Management Plan.* The primary management chapter, constituting a comprehensive description of the detailed policies and procedures to be followed in managing a project.

U. *Management Reserve.* That portion of the occupancy charge which is designated for payment of professional management services.

V. *Migrant.* A domestic farm laborer who works in any given local area on a seasonable basis and relocates his or her place of residence as farm work is obtained in other areas during the year.

W. *Minor.* The term minor includes persons under 18 years of age other than the tenant, co-tenant, member, or co-member. Persons aged 18 and over who are full-time students are treated as minors. The tenant, co-tenant, member, or co-member may never be counted as a minor.

X. *Moderate-Income Household.* A household having an adjusted annual income within the maximum moderate-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

Y. *Net Family Assets.* Net Family Assets include:

1. The value of equity in real property savings, demand deposits, and the market value of stocks, bonds, and other forms of capital investments, but exclude:

a. Interests in Indian trust land,

b. The value of necessary items of personal property such as furniture and automobile(s), and the debts against them,

c. The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and

d. The value of a trust fund that has been established and the trust is not revocable by, or under the control of, any member of the household, so long as the fund continues to be held in trust.

2. The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application, in excess of the consideration received therefor. In the case of a disposition as a part of a divorce settlement, the disposition shall not be considered to be for less than fair market value if the household member receives important consideration not measurable in dollar terms.

3. Income Derived from Net Family Assets which is included in Annual Income is determined as follows:

a. If Net Family Assets equal $5,000 or less, Annual Income includes the actual income derived from the Net Family Assets.

b. If Net Family Assets exceed $5,000, Annual Income includes the greater of:

(1) Actual income derived from all Net Family Assets, or

(2) A percentage of the value of such assets based on the Bank Passbook annual savings rate.

Z. *New Housing.* Newly constructed or substantially rehabilitated RRH, RCH, or LH project financed by FmHA. For rental assistance (RA) purposes, it further means before any units are occupied.

AA. *Operational Housing.* A completed RRH, RCH, or LH project financed by FmHA which has been opened for occupancy and has at least been partially occupied by tenants or members.

BB. *Pet.* A commonly accepted domesticated household animal (such as dog, cat, bird, etc.) owned or kept by a tenant or member.

CC. *Project.* A project is the total number of rental or cooperative housing units in one community such as a densely settled area, town or village operated under one management plan with one loan agreement/resolution. The units may have been developed originally with separate initial loans and separate loan agreements/resolutions, now consolidated into one operational project according to § 1965.68 of Subpart B of Part 1965 of this chapter.

DD. *Rental Agent.* The individual responsible for the leasing of the units. If other than the borrower, this individual may be hired by the borrower, or the management agent as specified in the management plan.

EE. *Rental Assistance (RA).* A, as used in this Exhibit, is the portion of the approved shelter cost paid by FmHA to compensate for the difference between the approved shelter cost and the monthly Tenant contribution as calculated according to paragraph IV of this Exhibit. When the monthly gross Tenant contribution is less than the approved utility allowance which is billed directly to and paid by the Tenant, the owner will pay the Tenant that difference according to paragraph IX A 2 of Exhibit E to this subpart. RA used in cooperative housing units will be calculated in the same manner.

FF. *Resident Assistant.* A person(s) residing in a housing unit who is essential to the well-being and care of the senior citizen(s) or handicapped person(s) residing in the unit and who is not related by blood, marriage or operation of the law to these tenants or members. The resident assistant is not considered to be part of the household and is not subject to the eligibility requirements of a tenant or member. The resident assistant receives compensation from sources outside the project. A resident assistant is not a chore service worker.

GG. *RCH* means Rural Cooperative Housing loans.

HH. *RHS* means Rural Housing Site loans.

II. *RRH* means rural Rental Housing loans.

JJ. *Shelter Cost.* The approved shelter cost consists of basic and/or market rent plus utility allowance, when required. Basic and/or market rent must be shown on the project budget for the year and approved according to §1930.124 of this subpart. Utility allowances, when required, must be determined and approved according to Exhibit A–6 to Subpart E to Part 1944 of this subpart. Any change in rental rates or utility allowances must be processed according to Exhibit C to this subpart. The shelter cost in a cooperative housing project will consist of occupancy charge plus utility allowance.

KK. *Site Manager.* The individual employed by the borrower or the management agent who lives at or near the project site and is responsible for the day-to-day operations of the project. A site manager residing at the project site may also be referred to as a resident manager.

LL. *Tenant.* A tenant also includes a co-tenant and is a person(s) who has signed a lease and is, or will be, an occupant of a unit in an RRH or LH project. A person who has ceased to be occupant, but whose personal property remains in the rental unit will be considered a tenant until such personal property is removed voluntarily or by other legal means.

MM. *Tenant Contribution.* The portion of the approved shelter cost paid by the tenant household (tenant rent). For tenants not receiving HUD section 8, this amount will be calculated according to Form FmHA 1944–8. For tenants receiving HUD section 8, this will be the amount referred to on HUD Form 50059 "Certification and Recertification of Tenant Eligibility," (or other HUD approved form), as family contribution. The proportion of tenant income and adjusted income paid as the tenant contribution will vary according to the type of subsidy provided to the household.

NN. *Very Low-Income Household.* A household having an adjusted annual income within the maximum very low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

III. Borrower Responsibilities

* * * * *

D. * * *

3. Coordinating and monitoring activities of established cooperative committees.

E. * * *

5. Participating in established cooperative committees to which they have voluntarily accepted assignment.

6. Carrying out duties and services necessary to maintain the cooperative property for which they have voluntarily accepted assignment.

* * * * *

V. Management Operations

* * * * *

D. * * *

2. *Owner managed projects.* The owner will be authorized to manage the rental project only when FmHA determines in writing that the owner (either as the individual borrower or as a part of an organization) has the necessary management capabilities.

a. Projects with owners with identity-of-interest relationships to the management agent will not be considered as an owner managed project. A typical management fee may be charged as an expense to the project. The compensation must be according to the provisions of paragraph V D of this Exhibit and be reasonable, earned, and not exceed the normal cost of similar services, had such services been provided by an independent management agent.

b. Since cooperatives are to be organized as self-managed entities, we would not expect the board of directors to have management experience. In lieu of this experience, the adviser to the board will provide management guidance during the formative years of the cooperative. Under the adviser's direction, the cooperative will become accustomed to this role and thus gain the ability to assume management responsibilities. If, after the required trial period outlined in Subpart E of Part 1944, the adviser and FmHA agree that the cooperative's board is unable to assume management responsibilities, professional management will be hired by the cooperative. In the event the adviser and FmHA cannot agree that this action is warranted, the final decision will rest with FmHA. We would expect the amount of compensation paid to a cooperative adviser to be less than that paid to other types of management agents in order to provide the members with some equity in the early years. (See Subpart E to Part 1944).

* * * * *

E. * * *

2. *Owner Occupancy.* With the prior approval of the State Director, owners may occupy a unit in the project when the owner will manage the project rather than hiring a management agent or a site manager. The size, composition, and location of the project must justify the services of a site manager or caretaker, and the State Director must determine the owner is capable of performing these services. The rental rate will be included as described in paragraph V E 1 of this Exhibit.

* * * * *

VI Renting Procedure

* * * * *

B. * * *

1. * * *

c. To determine eligibility for continued occupancy, the tenant's Adjusted Annual Income must be determined at least once every 12 months. When the tenant's Adjusted Annual Income exceeds the moderate-income limit established for the area in which the project is located, the tenant is no longer eligible and will be required to vacate the project according to the terms of the lease and paragraph VI B 5 of this Exhibit. Continued occupancy by cooperative members will not be affected by this income criteria. Cooperative members, after initial certification of income eligibility, may remain members regardless of income.

* * * * *

2. * * *

a. The following occupancy standards are to be complied with to assure efficient use of the units developed with FmHA financing and apply to all RRH projects, to determine the initial occupancy of RCH members, and to LH projects designed and operated for year-round occupancy:

* * * * *

6. * * *

a. The District Director may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent units to ineligible persons for temporary periods to protect the financial interest of the Government. Likewise, this provision may extend to a cooperative when there are no eligible prospective members on the waiting list. This authority will be for periods not to exceed one year. Within the period of the lease the tenant may not be required to move for any reasons of ineligibility. A copy of the authorization to rent to ineligibles will be forwarded to the State Office. The following

determinations must be made by the authorizing FmHA official.

* * * * *

C. * * *

2. When a prospective tenant or member files an application for occupancy the borrower or rental agent will place the prospect's name chronologically on the appropriate written waiting list. An application is a written document(s) prescribed by the management providing sufficient information for the rental agent or board to complete the steps necessary to determine eligibility. The actual determination of eligibility will be conducted according to the application process described in paragraph VI D of this Exhibit. Eligibility for cooperative membership will be determined in accordance with Subpart E to Part 1944.

* * * * *

VIII. Lease Agreements

A Lease Agreement is a written contract between the tenant and landlord assuring the tenant quiet, peaceful enjoyment and exclusive possession of a specific dwelling unit in return for payment of rent and reasonable use and protection of the property. The contract between a cooperative member and the cooperative is called an Occupancy Agreement.

A. *Form of Lease.* Each State Director is encouraged to prepare a sample lease form complying with individual State laws and FmHA requirements. Occupancy agreements for cooperatives are to be prepared in accordance with applicable State laws and Subpart E to Part 1944. The State Director may incorporate clauses which meet a specific need in compliance with State law. Any sample lease must be reviewed and approved by the OGC before being provided to borrowers as a guide for preparing an acceptable project lease.

* * * * *

B. *Required Lease or Occupancy Agreement Clauses.* The following clauses will be required in leases used in connection with FmHA-financed housing projects. Only clauses in paragraphs 1, 3b, 3d, 3e, 4, and 5 are applicable to cooperative occupancy agreements.

* * * * *

3. All leases used in FmHA-financed RRH projects must include the following clauses except for elderly, disabled, and handicapped persons in a full project plan project: (Occupancy agreements must include the clauses contained in b, d, and e.)

* * * * *

5. For leases or occupancy agreements operating under Plan II Interest Credit Only: * * *

* * * * *

C. * * *

13. Agreement that tenant or member may not let or sublet all or any part of the premises without the consent of management or cooperative and FmHA.

* * * * *

18. Disposition of lease or occupancy agreement if building becomes uninhabitable because of fire or other disaster. Right of owner to repair or rehabilitate the building within a certain period or terminate the lease or occupancy agreement.

19. The agreement that any tenant or member grievance or appeal from management's decision shall be resolved in accordance with procedures consistent with FmHA regulations covering such procedures which are posted in the rental office or at the cooperative.

* * * * *

21. That the lease may be terminated by the tenant with 30 days notice, prior to expiration of its term for "good cause" such as moving to another location for employment, loss of job, severe illness, death of spouse, or other reasons customary or mandatory in the community, or after notification by RRH borrower of intent to prepay. The term on which a cooperative member may cancel an occupancy agreement for "good cause" shall be 4 months.

* * * * *

F. *Occupancy Rules.* Occupancy rules and regulations must be provided and explained by the project management to enable the tenant or member to understand the purposes, objectives, and standards of the project. The rules will be approved by the FmHA State Director or designee, generally together with the project management plan, management agreement, and lease or occupancy agreement form.

* * * * *

8. * * *

j. A project newsletter, if desired for rental projects. Cooperatives will publish a monthly newsletter.

* * * * *

G. *Security Deposits.*

1. Security deposits are encouraged and they should be used when it is reasonable and customary for the area. The amount of security deposits must be reflected in the borrower's management plan and may not be changed without the written consent of the FmHA district Director. When security deposits are used, they should be an amount equal to the tenant contribution for one month or basic rent, whichever is greater. Families receiving a HUD rental subsidy will pay security deposits according to HUD requirements. In an elderly project, the amount of additional security deposit for pets must be reasonable and not designed to prohibit or discourage tenancy but in no case should it exceed the basic rent of the project. Where a seeing eye or hearing ear animal is necessary for the normal function of a household member, an additional security deposit for the animal may not be charged. A membership fee, equal to one month's occupancy charge, will be required from members of a cooperative.

2. * * *

a. For RRH projects, not exceed a down payment of 25 percent of adjusted monthly income plus $15 per month or that amount needed monthly to complete the security deposit within twelve months, whichever is greater. For RCH projects, not exceed an initial payment of $25 plus the amount needed monthly to complete the membership fee within 12 months.

* * * * *

3. Security deposits or membership fees shall be handled in accordance with any State or local laws governing tenant security deposits or membership fees. Both security deposits and membership fees shall be deposited in a separate account at a Federally insured institution, and shall be handled in accordance with any State or local laws governing such deposits. Funds in the Security Deposit Account shall only be used for authorized purposes as intended and represented by the project management in the management plan, and until so used, shall be held by the borrower in trust for the respective tenants. Funds in the Membership Fee Account shall only be used for authorized purposes, until so used, shall be held by the borrower in trust for the respective members.

* * * * *

IX. Rent or Occupancy Charge Collection

* * * * *

B. *Delinquencies.* A system to identify and detect unpaid rents or occupancy charges should be instituted within the project. A penalty of up to $10.00 for late payment after a 10-day grace period, or the grace period prescribed by State law, may be permitted. The borrower should consider the circumstances causing the late payment before assessing any penalty. True hardship cases should not be assessed penalties; however, maintaining a firm and fair policy on collection encourages tenants or members to meet their obligations.

* * * * *

XIII. Accounting and Report Requirements and Financial Management Analysis

* * * * *

B. * * *

1. * * *

c. All funds received and held in any account, except the tenant security deposit, membership fee, and patronage capital shall be held in trust by the borrower for the loan obligation until used.

* * * * *

2. * * *

a. * * *

(3) *Disbursements.* Not later than the 15th of each month, out of the General Operating Account, the borrower shall pay or fund the actual, reasonable and necessary monthly project expenses. Current expenses may include the initial purchase and installation of furnishings and equipment with any other funds deposited in the General Operating Account which are not proceeds of the loan or income or revenue from the project. (However, non-profit borrowers are permitted to use loan funds specified for initial operating capital purposes as authorized in FmHA Instruction 1944-E). Other authorized disbursements are FmHA approved installments of debt service, real estate tax and insurance escrow, reserve, and return on investment as provided in section 2 c below. Any balance remaining in an RRH General Operating Account except as authorized above, may be retained in this account or transferred to the Reserve Account. Any balance remaining in an RCH General Operating Account will be

transferred into the cooperative's patronage capital account at the end of the fiscal year.

(4) *Unauthorized Disbursements.* Except for cooperatives, late fees charged the borrower according to Subpart K of Part 1951 of this chapter, may not be paid from project income. When late fees are deducted by FmHA from payments made from project income, the project General Operating Account must be reimbursed from nonproject income of the owner or management agent or deducted from the owner's return on investment.

* * * * *

d. *Patronage Capital Account.* Any funds remaining in the general operating account at the end of the fiscal year will be transferred and maintained in a lump sum in an interest bearing patronage capital account and will be handled according to any state laws governing patronage capital. That amount will then be equally assigned by bookkeeping entry only to each member. The patronage capital funds will be held by the cooperative in trust for the respective member until that member terminates membership in the cooperative, provided the member has paid all charges and costs due the cooperative. The patronage capital funds will not be used for any other purpose.

e. *Security Deposit or Membership Fee Account (when applicable).* Upon receipt, all security deposit or membership fee funds collected shall be recorded in a bookkeeping account that is kept separate from the project bookkeeping accounts. These funds shall be deposited in an account that is kept separate from any project funds and will be handled according to any State or local laws governing security or membership fee deposits. Funds in the Tenant Security Deposit Account or Membership Fee Account shall be used only for authorized purposes as intended and represented by the project management plan. They shall be held by the borrower in trust for the respective tenants or members until so used. Any amount of the Account which is retained by the borrower as a result of lease violations shall be transferred to the General Operating Account and treated as income of the housing.

(1) The owner will follow all state and local requirements governing the handling and disposition of security or membership fee deposits.

(2) In no case will interest earned on security or membership fee deposits accrue to project management or the owner of a rental project. Any interest earned but not returned to the tenants or members will accrue to the project's general operating account for disposition as outlined in the management plan.

* * * * *

XIV. Termination and Eviction

* * * * *

A. * * *

4. *Rent Overburden.* Any tenant household (except those receiving Section 8 benefits) paying more than the contribution levels cited in paragraph IV A 2 c (1) or (2) or (3) of this Exhibit toward rent, including utilities, is considered to be experiencing rent overburden. Whenever a tenant is experiencing rent overburden, borrowers are encouraged to utilize any available and compatible governmental rental subsidies including FmHA RA and/or interest credit; or to assist Tenants in applying for Section 8 housing assistance to minimize termination of tenancy. For purposes of this provision, the term "rent overburden" also refers to occupancy charges paid by cooperative members.

B. * * *

1. * * *

b. State the reasons for the termination with enough specificity to enable the tenant or member to prepare a response. In those cases where the proposed termination of the tenancy occupancy is due to the tenant's failure to pay rent, or the member's failure to pay the occupancy charge, a notice stating the dollar amount of the balance due on the rent account and the date of such computation shall satisfy the requirement of specificity.

* * * * *

8. Exhibit B–1 of Subpart C is amended by redesignating paragraphs 16 and 17 as 18 and 19, and paragraphs 12 through 15 as 13 through 16; by adding new paragraphs 12, 17, and 18d; and by revising paragraphs 6e, and the introductory text of paragraph 15, to read as follows:

Exhibit B–1—Management Plan Requirements for FmHA Multiple Family Housing Projects

* * * * *

6. * * *

e. What is the amount of any required security or membership fee deposits? What is the program for maintaining adequate accounting records of security or membership fee deposits? How will interest earned on these security deposits be handled?

* * * * *

12. *Plans for member participation in project operations.*

a. Who will explain to the members the types of committees the cooperative will be using?

b. What will the cooperative do to induce member participation on committees?

c. How will the board members participate with the committees?

d. Is the responsible person knowledgeable of FmHA Tenant Grievances and Appeals procedures? Where will the procedure be kept? Who will keep it and see that it is posted?

* * * * *

15. *Management background and/or experience.* FmHA requires adequate management of multi-family housing projects. Exhibit B–4 of this subpart will be used by a prospective management agent to provide a resume of management background and/or experience. Exhibit B–5 of this subpart will be used by an owner who proposes to provide direct project management. A cooperative's board of directors will manage the business of the cooperative with the assistance of the adviser to the board. If the board is unable, in the adviser's opinion, to manage the cooperative after an adequate period of training, then FmHA will make the determination of whether the cooperative will hire professional management.

* * * * *

17. *Board of director/adviser relationship.* Discuss the relationship of the adviser and its effect on decisions made by the board.

18. * * *

d. In the case of a cooperative, describe the amount of compensation to be paid to the adviser to the board.

* * * * *

9. Exhibit B–2 to Subpart C is amended by revising paragraph 1 to read as follows:

Exhibit B–2—Requirements for Management Agreements

* * * * *

1. A written management agreement is required for any project when the owner retains a management agent but is not required when the project is managed by the owner as described in paragraph V D 2 of Exhibit B of this subpart. However, a written management plan is required for all projects. Although the adviser to a cooperative board of directors is not the same type of agent as those who are now managing rental projects, it would still be prudent to have a written agreement between the board and the adviser which sets forth their relationship and what the adviser is expected to do for the cooperative. Exhibit E, E–1, and F to Subpart E to Part 1944 outlines the functions and responsibilities of an adviser. The agreement may follow the content of Exhibit B–3 of this subpart.

* * * * *

10. Exhibit B–4 of Subpart C is amended by revising the heading to read as follows:

Exhibit B–4—Questionnaire for Prospective Management Agent of a Multiple Family Rental or Labor Housing Project

11. Exhibit B–5 to Subpart C is amended by revising the heading to read as follows:

Exhibit B–5—Questionnaire for Owner Who Proposes Owner-Management of a Multiple Family Rental or Labor Housing Project

12. Exhibit C to Subpart C is amended by revising the heading, and paragraphs I, III C, IV A 3, and VI C 1 b to read as follows:

Exhibit C—Rent and Occupancy Charge Changes

I. *Objectives:* This Exhibit prescribes the method of processing changes in the monthly rental or occupancy charge rates for tenants or members in Farmers Home Administration (FmHA) Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) projects. This Exhibit covers all RRH, RCH, and LH loans, including those approved before the date of this subpart.

* * * * *

III. * * *

C. All borrowers are encouraged to participate in the FmHA Rental Assistance (RA) Program. However, unless the Administrator notifies State and District Offices otherwise, all borrowers with projects meeting the eligibility requirements of Paragraph II B of Exhibit E of this subpart, except full profit borrowers, will be required according to section 530 of Title V of the Housing Act of 1949, as amended, to apply for

and accept RA when it appears that a rent or occupancy charge change will cause more than 20 percent of the low-income tenants to pay in excess of 30 percent of adjusted monthly income for shelter costs. If FmHA does not have RA available for this purpose, the borrower is encouraged to use other sources of governmental subsidies. The availability or unavailability of governmental subsidies will not preclude FmHA from processing a rent or occupancy charge change request.

IV. * * *

A. * * *

3. An application for RA on Form FmHA 1944–25, "Request For Rental Assistance," if the borrower's project is an eligible project and the proposed change will cause 20 percent of the very low- and low-income tenants or members to pay in excess of 30 percent of adjusted monthly income for shelter costs. If the low-income tenants or members are receiving some other form of rent subsidy, such as HUD's existing Section 8, an exception may be made to this requirement.

* * * * *

VI. * * *

C. * * *

1. * * *

b. The amount of operating cost change incurred with respect to comparable rental dwelling units serving the project's market area. When no comparable dwelling units exist in the project's market area, the FmHA approval official may approve a rent or occupancy charge change according to the best available data regarding operating cost change.

* * * * *

13. Exhibit E to Subpart C is amended by revising paragraph I to read as follows:

Exhibit E—Rental Assistance Program

I. *General.* The objective of the rental assistance (RA) program is to reduce rents paid by low-income households. This Exhibit sets forth the policies and procedures and delegates authority under which RA will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and eligible members occupying Rural Cooperative Housing (RCH) projects financed by FmHA. For the purpose of this Exhibit, the term "tenant" also means "member". This exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based non-profit organization, non-profit organization of farmworkers, or a State of local public Agency. RA will supplement the benefits available to tenants under the interest credit program outlined in Exhibit H to this Subpart.

* * * * *

14. Exhibit F to Subpart C is amended by revising the introductory text of paragraph A 4, and paragraphs B 3, C 1, and C 2 to read as follows:

Exhibit F—Visit Checklist for Multiple Family Housing Projects

A. * * *

4. *Tenant or Member Selection:*

Are apartments advertised?

Are applications received at project? Where else?

Does the application form meet FmHA requirements?

Does the board of directors consider and act on new member applications?

Are applicants for cooperative housing screened for suitability before being placed on waiting list?

Is there a signed What is Cooperative Housing? form indicating the member recognizes and accepts the responsibilities associated with cooperative living?

Are rejected tenants or members given their appeal rights (FmHA Instruction 1944–L)?

Are rejected applications on hand since last compliance review?

Is everyone allowed to apply?

Is the ethnic and racial composition of the project appropriate in light of the community?

* * * * *

B. * * *

3. *Project Maintenance.*

Are units individually metered?

Do units have storm doors and windows?

Does the project have a neat appearance?

Is maintenance being deferred?

Is the landscaping completed?

Are equipment and facilities adequate? (trash bins, playground equipment, etc.)

Are cooperative members performing maintenance functions?

What types of maintenance functions are contracted out?

C. * * *

1. *Management.*

Does the owner have an interest in the management firm?

Is there an approved management plan?

Does it cover maintenance and inspection?

Is there an approved management agreement?

Is there an agreement with the adviser?

Are agreements being followed?

Has there been a change in management, partners or stockholders?

Is the borrower cooperative in working with FmHA?

Is borrower interested in group supervision?

Does the board of directors hold monthly meetings?

Does the adviser to the board attend each meeting?

Does it appear that the board has control over cooperative operations?

Does the cooperative have active committees?

What committees and how many members on each?

How often do committees meet?

Does a member of the board attend committee meetings?

2. *Bookkeeping System:*

Is there an approved bookkeeping system?

Are borrower accounts current?

What kind of borrower accounting and reporting system is being used?

Does the borrower accounting system operate on accrual basis?

Is the borrower bookkeeping system located on the project site?

What type of bookkeeping training is being given to the cooperative treasurer?

15. Exhibit H to Subpart C is amended by revising paragraphs IID, IIE, and VIC, to read as follows:

Exhibit H—Interest Credits on Insured Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) Loans

* * * * *

II. * * *

D *Basic Rent* is determined on the basis of operating the project with payments of principal and interest on a loan to be repaid over a 30-year or longer period at 1 percent per annum. Basic rent also means basic occupancy charge.

E *Market Rental* is a unit rental charge determined on the basis of operating the project with the payments of principal and interest which the borrower is obligated to pay under the terms of the promissory note. Market rental also means market occupancy charge in a rural cooperative housing project.

* * * * *

VI. * * *

C *Vacancies.* When all construction is not completed but some units are ready for occupancy and the contractor consents in writing to permit occupancy, the State Director may authorize the occupancy of those completed units to eligible tenants or members at the rent or occupancy charge they would be paying should the FmHA loan be closed. A prerent-up or preoccupancy conference is required. All income generated must be deposited in the General Operating Account and used for management and operation of the units except for members' patronage capital contributions.

* * * * *

PART 1944—HOUSING

16. The authority citation for Part 1944 is revised to read as follows:

Authority: 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

17. The heading of Subpart E of Part 1944 is revised to read as follows:

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

18. Section 1944.201 is revised to read as follows:

§ 1944.201 General.

This subpart sets forth the policies and procedures and delegates authority for making Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans under sections 515 and 521 of the Housing Act of 1949.

19. Section 1944.202 is revised to read as follows:

§ 1944.202 Objective.

The basic objective of RRH and RCH loans is to provide eligible persons with economically designed and constructed rental or cooperative housing and

related facilities suited to their living requirements.

20. Section 1944.205 is revised to read as follows:

§ 1944.205 Definitions.

Adviser to the board. An individual or organization who will work with and provide guidance to a cooperative board.

Amortization effective date (AED). A date established by the accounting system on which advanced principal and any accrued interest is combined and amortized to establish a schedule of payments. This date is always the first day of a month.

Articles of incorporation. A document filed with a government agency containing information about the organization's structure and operation.

Board and directors. The governing body and members of the governing body of an organization.

Bylaws. Rules adopted by an organization to govern the conduct of its affairs.

Community. Cities, towns, boroughs, villages and unincorporated places which have the characteristics of an incorporated area and are easily identifiable as established concentrations of inhabited dwellings located in rural areas as defined in § 1944.10 of Subpart A of Part 1944 of this chapter.

Congregate housing. Housing that affords an assisted independent living environment that offers the elderly, handicapped or disabled, person who may be functionally impaired or socially deprived, but in good health (not acutely physically ill), the residential accommodations, central dining facilities, related facilities, and support service(s) required to achieve, maintain, or return to a semi-independent lifestyle and prevent premature or unnecessary institutionalization as he/she grows older.

Consumer cooperative. A corporation which (1) is organized under the cooperative laws of a State or Federally recognized Indian tribe; (2) will own and operate the housing on a cooperative basis solely for the benefit of the members; (3) will operate at cost and, for this purpose, any patronage refunds accruing to members in accordance with § 1944.215(i) of this subpart will not be considered gains or profits; and (4) will restrict membership in the housing to eligible persons and, to any extent the cooperative and FmHA permit, to others in special circumstances.

Dealer-contractor. A person, firm, partnership or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes for persons who purchase such homes for purposes other than resale. Dealer-contractors will be qualified as shown in paragraphs IX and X of Exhibit F of Subpart A of Part 1944 of this chapter, except all processing will be handled by the District Director rather than the County Supervisor.

Development cost. The cost of constructing, purchasing, improving, altering, or repairing housing and related facilities and the value or cost of purchasing and improving the necessary land. Costs that can be paid for with RRH and RCH loan funds are detailed in § 1944.212 of this subpart.

Elderly, handicapped or disabled person. A person who is at least 62 years old. The term elderly (senior citizen) also means persons with the following handicap or disabilities, regardless of age:

(1) *Handicapped.* (i) Inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which:

(A) Has lasted or can be expected to last for a continuous period of not less than 12 months; or which can be expected to result in death;

(B) Substantially impedes the ability to live independently; and

(C) Is of such a nature that such ability could be improved by more suitable housing conditions.

(ii) In the case of a blind person who is at least 55 years old (within the meaning of "blindness" as determined in section 223 of the Social Security Act), and who is unable because of the blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

(2) *Disabled.* In the case of developmental disability, a person with a severe, chronic disability which:

(i) Is attributable to a mental or physical impairment or combination of mental or physical impairment;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self care,

(B) Receptive and expressive language,

(C) Learning,

(D) Mobility,

(E) Self-direction,

(F) Capacity for independent living,

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

Elderly household. A household where the tenant or co-tenant is at least 62 years of age, handicapped, or disabled as defined in § 1944.205 of this subpart. An elderly household may include a person(s) younger than 62 years of age who is essential to the elderly, handicapped, or disabled person's care and wellbeing. (To receive an elderly household deduction, the elderly, handicapped, or disabled person must be the tenant or co-tenant.)

Eligible tenants or cooperative members. Elderly, handicapped, or disabled persons and very low-, low-, or moderate-income households or any combination thereof as planned for the project and shown on the applicant's loan resolution or loan agreement and who meet the eligibility requirements of Exhibit B to Subpart C of Part 1930 of this chapter. In the case of cooperative housing projects, all members (occupants) must have a very low, low, or moderate income except that any member who is admitted as an eligible member of the cooperative may not subsequently be deprived of his/her membership or tenancy by reason of no longer meeting the income eligibility requirements as outlined in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

Gains or profits. For the purpose of the patronage capital refund, gains and profits do not include dividends payable on stock which is nonvoting, limited as to the amount of dividends that can be paid thereon and limited as to liquidation value in the event of corporate dissolution.

Group living. A type of congregate housing that is occupied by one or more elderly, handicapped or disabled person sharing living space within a rental unit in which a resident assistant is required.

Household. One or more persons who maintain or will maintain residency in one rental or cooperative unit, but not including a resident assistant or chore service worker.

Individual. A natural person.

Limited equity. For the purpose of this subpart, the term "limited equity" refers to a limitation on equity in the cooperative housing that may accrue to the benefit of a member (Person or household) and is further described in 1944.215(i) and in Exhibit A of this subpart.

Limited partnership. A partnership consisting of one or more general partners who are jointly and severally responsible for conducting the business of the partnership, and one or more special partners contributing cash in a specific amount as capital to the common stock, who are not liable for the debts of the partnership beyond the funds contributed.

Limited profit basis. An individual or organization applicant who, in order to obtain interest credit assistance, will agree to limit the amount of profit to be obtained. Applicants operating on this basis will be permitted to receive a return on their initial investment in accordance with the requirements outlined in § 1944.215 of this subpart. The applicant will legally obligate itself to regulate rents, charges, rate of return, and methods of operation.

Low-income household. A household having an adjusted annual income within the maximum low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

Manufactured home (unit). A dwelling unit which is built to conform with the Federal Manufactured Home Construction and Safety Standards and Farmers Home Administration (FmHA) thermal requirements. Manufactured homes are described further in Exhibit J of Subpart A of Part 1924 of this chapter.

Manufactured home rental project. A parcel(s) of land located in the same community which contain two or more manufactured home units on each parcel for rental or cooperative member occupancy and operated under one management plan with one loan agreement/resolution. For a cooperative housing project, the parcels of land must be in the same neighborhood and in a clustered configuration.

Maximum debt limit (MDL). The maximum amount that FmHA will lend for a project based on the lesser of appraised value or total development cost multiplied by 97 percent for a limited profit operation or 102 percent for a nonprofit operation.

Member. A person who has executed documents pertaining to a cooperative housing type of living arrangement and has committed himself/herself to upholding the cooperative concept.

Moderate-income household. A household having an adjusted annual income within the maximum moderate-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

Occupancy agreement. A contract setting forth the rights and obligations of the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing. An example of the agreement is in Exhibit J.

OGC. The Regional Attorney or the Attorney in Charge in the field office of the Office of the General Counsel of the United States Department of Agriculture.

Organization. A private nonprofit corporation, profit corporation, consumer cooperative, association, State, or local public agency, trust, partnership, or limited partnership.

Owner-builder. A qualified builder-applicant who has experience and has demonstrated the ability and capability to build an RRH project.

Patronage capital refund. Amounts received by the cooperative in excess of operating costs and expenses which have been assigned to members' patronage capital accounts each year of membership in the cooperative.

Private nonprofit corporation. A corporation which:

(1) Is controlled by private persons or interests;

(2) Is organized and operated for purposes other than making gains or profits for the corporation or its members;

(3) Is legally precluded from distributing to its members any gains or profits during its existence; and

(4) In the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a municipal corporation which will operate the housing for the same or similar purposes.

Project. The total number of rental or cooperative housing units that are operated under one management plan with one loan agreement/resolution.

Resident assistant. A person(s) residing in a housing unit who is essential to the well-being and care of the elderly, handicapped, or disabled person(s) residing in the unit and who is not related by blood, marriage, or operation of the law to these tenants or members. The resident assistant is not considered to be part of the household and is not subject to the eligibility requirements of a tenant or member. The resident assistant receives compensation from sources other than FmHA. A resident assistant is not a chore service worker as defined in Exhibit B of Subpart C of Part 1930 of this chapter.

Rural area. Open country or rural places as defined in § 1944.10 of Subpart A of Part 1944 of this chapter.

Rural rental housing. Structures in a rural area which are or will be suitable for, and available to, eligible tenants on a rental basis for dwelling use. The structures may include related facilities where appropriate.

Security value. The present market value of the real estate offered as security for the loan as determined by the loan approval official less the unpaid principal balance plus past due interest on any other liens against it. Other liens will include any prior liens and junior liens to be or likely to be taken or subordinated at or immediately after loan closing.

Subscription agreement. The initial contract between the prospective cooperative member and the cooperative specifying the terms of application for membership and the amount of the membership fee contributed by the member. An example of the agreement is in Exhibit I.

Very low-income household. A household having an adjusted annual income within the maximum very low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

21. Section 1944.211 is amended by revising the introductory text of paragraph (a), introductory text of paragraph (a)(2), (a)(5)(ii), (a)(5)(v)(A), (a)(5)(v)(D), the introductory text of paragraph (a)(6), (a)(6)(i), the introductory text of paragraph (a)(10)(i), by redesignating paragraphs (a)(11) and (a)(12) as (a)(12) and (a)(13), and by adding new paragraph (a)(11) to read as follows:

§ 1944.211 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an RRH or RCH loan, the applicant must:

* * * * *

(2) With the exception of a State or local public agency, be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that allow the establishment of rent or occupancy charges within the payment ability of eligible tenants or members.

* * * * *

(5) * * *

(ii) The amount of the RRH or RCH loan against the property will not exceed the estimated market value determined in accordance with Subpart B of Part 1922 of this chapter (available in any FmHA office).

* * * * *

(v) * * *

(A) Not restrict the right to foreclose the RRH or RCH mortgage or to transfer the lease.

* * * * *

(D) Permit the borrower, in the event of default or inability to continue with

the lease and the loan, to transfer the leasehold, subject to the RRH or RCH mortgage, to a transferee with the assumption of the RRH or RCH debt.

* * * * *

(6) Have or be able to obtain the initial operating capital and other assets needed for a sound loan. The initial operating capital will be at least 2 percent of the total development cost of the project. Loans made to nonprofit organizations and to State or local public agencies may include up to 2 percent of the development cost for initial operating expenses.

(i) Initial operating capital should be sufficient to pay for such costs as property and liability insurance premiums, fidelity bond premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishings, and equipment, printing lease, occupancy agreement, or subscription agreement forms and other initial operating expenses. It will be deposited into the general operating account in accordance with the provisions of the loan agreement or loan resolution prior to the start of construction or loan closing (whichever is first) and will be used for authorized purposes only.

* * * * *

(10) * * *

(i) If operating in one community and its trade area, meet the following additional requirements for an RRH loan:

* * * * *

(11) In the case of a cooperative:

(i) Each member must be limited to one vote in the affairs of the cooperative.

(ii) The number of directors must not be less than 5, or whatever is allowable under State law.

* * * * *

22. Section 1944.212 is amended by revising the introductory text, the introductory text of paragraph (b)(6), (b)(6)(iii), (b)(7) (ii) and (iii), (d)(2), (e)(2), (g), (n), and (o), to read as follows:

§ 1944.212 Loan purposes.

RRH and RCH loans may be made to qualified applicants to:

* * * * *

(b) * * *

(6) When the downtown location of a rehabilitation project dictates such, a portion of the structure (such as part of the ground floor and basement) can be designated for commercial use on a lease basis. Loan funds, however, cannot be used to finance any cost associated with the commercial space. In order to determine the correct loan amount for the residential portion of such a structure, the following guidelines will apply:

* * * * *

(iii) The costs which cannot be easily and appropriately isolated (such as the cost associated with repair or renovation of a boiler, the value of the structure "as is," and certain mechanical or electrical components that will benefit both commercial and residential tenants or members will be prorated between the two uses based on the percentage of equipment load (example—central boiler or air conditioning) which would be necessary for each portion of the structure.

* * * * *

(7) * * *

(11) The proposed use of the leased space has a mutually supportive relationship to the needs of the residential tenants or members and to the use of the residential portion of the structure.

(iii) The terms of the lease and the proposed use of the leased space do not jeopardize the interests of the tenants or members of the project or the continued use of the residential portion of the structure.

* * * * *

(d) * * *

(2) The facilities are provided for the exclusive use of the project or funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the project. The applicant will agree in writing to the application, as extra payments on the loan, of any subsequent collection by the borrower from other users or beneficiaries of the facility.

* * * * *

(e) * * *

(2) Recreation center when the project is large enough to justify the facility. In all projects, passive recreation (such as outdoor seating) for elderly rental projects and active facilities (such as tot lots) for family projects will be provided.

* * * * *

(g) Purchase and install ranges, refrigerators, drapes, drapery rods and clothes washers and dryers. Laundry facilities are required in all projects and clothes washers and dryers should be provided in a central laundry room. Normally, a minimum of one washer and dryer should be provided for every 8 to 12 units in a project. Clothes washers and dryers may not be installed in individual units if the installation is not customary in the area for the size of project and type of housing involved. In any case, both central and individual laundry facilities will not be provided in a single project.

* * * * *

(n) Construct demonstration projects involving innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies, but do meet the intent of providing decent, safe, and sanitary rural housing. Only the Administrator may authorize loan funds to be used for this purpose.

(o) Finance the conversion of section 502 units in inventory to a section 515 project, in accordance with the requirements of this subpart and Subpart C to Part 1955 of this chapter. Loans for this purpose can be made only to public agencies and private nonprofit organizations. Units should be repaired or rehabilitated prior to conversion to section 515 housing. To facilitate a cooperative's self-maintenance plan, the use of 502 inventory houses will be considered only if the units are located in the same subdivision and in a clustered configuration.

23. Section 1944.213 is amended by revising the introductory text of paragraph (a), (a)(1), and (b)(2) to read as follows:

§ 1944.213 Limitations.

(a) *Loan limits.* The amount of the RRH loan(s) on each project is limited to the maximum amount of the State Director's loan approving authority unless the National Office provides prior written authorization. All RCH loans will require National Office authorization. To request authorization, the State Director must submit the preapplication, detailed information on the need and market for the project, and his/her recommendations. This must be done before Form AD–622, "Notice of Preapplication Review Action," or any other notice is given to the applicant indicating that the loan has been determined eligible. Additional RRH loans to the same applicant entity may be made on the same or contiguous site without regard to this limitation if the previous project is completed and is being successfully operated. A clear market demand must be evidenced for any additional units to be provided. Each loan will also be subject to the following additional requirements:

(1) For nonprofit corporations, consumer cooperatives, and State or local public agencies, the amount of the loan(s) will be limited to the development cost or the security value of each project, whichever is less, plus the 2 percent initial operating capital and/or the relocation costs incurred as indicated in § 1944.215(t) of this subpart.

(b) * * *

(2) Commercial facilities except essential service-type facilities for tenants or members when such facilities are not conveniently available.

* * * * *

24. Section 1944.215 is amended by revising the introductory text of paragraph (a), paragraph (a)(8), the introductory text of paragraph (b)(1), paragraph (b)(1)(ii), the introductory text of paragraph (b)(3), paragraphs (b)(3)(ii), (b)(6), (e), (f)(3), by redesignating paragraphs (g) through (u) as (j) through (x), by adding new paragraphs (g), (h), and (i), by revising paragraphs (j)(2), (j)(3), and (j)(4), the introductory text of paragraph (l), paragraphs (m), (r), (s)(3); the introductory text of paragraph (s)(5), paragraphs (s)(6)(i), (s)(6)(iii), (s)(6)(iv), (u), (w), and (x)(1) to read as follows:

§ 1944.215 Special conditions.

(a) *Cost containment.* To help assure low affordable rental and occupancy rates, projects must be economical in construction and not of elaborate design or materials. Cost containment is not to be interpreted as accepting poor design or cheap construction. Projects must provide the features and amenities necessary for the lifestyles of the tenants and members. Cost containment challenges us to consider the cost/benefit ratio when evaluating, recommending or requiring specific design features or construction techniques. The following guidelines should be followed when developing projects:

* * * * *

(8) When evaluating projects, life cycle costs will be considered. These costs include: Initial costs, future replacement costs and operation and maintenance costs. The economic lives of alternative designs and materials will be considered. Reductions in initial costs may result in higher life cycle costs.

* * * * *

(b) * * *

(1) Be economically constructed and not of elaborate design or materials. All new construction will conform with the applicable development standards of § 1924.5(d)(1) of Subpart A of Part 1924 of this chapter. As a general rule, the gross square foot living area of new units and related facilities to be constructed with loan funds will be within the ranges listed below. Living area does not include outdoor storage space when unfinished or space for heating and cooling equipment.

* * * * *

(ii) In townhouse units where living area is on two floor levels of the unit, the maximum gross square footage of living area may be exceeded by up to 70 square feet, but only to the extent necessary to accommodate interior stairways.

* * * * *

(3) Be residential in character and be designed to meet the needs of eligible tenants or members. Generally, structures should not be more than three stories high. However, low-rise structures with elevators can be considered when the following conditions exist:

* * * * *

(ii) Land costs are such that one- to three-story construction would result in a unit cost and rental/occupancy rates in excess of what eligible tenants and members can afford.

* * * * *

(6) Meet the needs of handicapped tenants and members. At least 5 percent of the units in the project or one unit, whichever is greater, must be accessible to or adaptable for physically handicapped persons. The percentage of the units provided may be modified if an applicant shows, through information obtained from a State, local or independent agency or organization serving handicapped people, that a different percentage of accessible or adaptable units is appropriate. However, at least one accessible unit will be provided. Adaptable units must be constructed in accordance with the uniform Federal Accessibility Standards, sections 4.34.3 through 4.34.6.

* * * * *

(e) *Refinancing loans.* Each borrower must agree to refinance the unpaid balance of the loan at the request of FmHA when it appears to FmHA that the borrower is able to obtain a loan from responsible cooperative or private credit sources at rates and terms which FmHA considers reasonable, and still offer the units to eligible tenants and members at rates within their payment ability. The refinancing of a loan must comply with the restrictions indicated in § 1944.236(b)(5) of this subpart and Subpart F of Part 1951 of this chapter.

(f) * * *

(3) Form FmHA 1944–35, "Loan Resolution for an RRH Loan to a Broadly Based Nonprofit Corporation or RRH Loan to a Profit Type Corporation or RRH Loan to a Profit Type Corporation Operating on a Limited Profit Basis or RCH Loan to a Nonprofit Cooperative Corporation."

(g) *Cooperative management.* Consideration must be given to the special conditions of a cooperative housing structure concerning management. The following forms of management will be recognized for cooperative housing.

(i) Self-management. The primary management objective for small housing cooperative. To achieve this, education and training efforts should be an on-going part of their early years of operation. Accordingly, modest educational costs will be permitted in the budget as a subheading under management expenses. It is understood that, in the beginning, it may be necessary to obtain some outside services, such as a bookkeeper. If so, then partial self-management can be considered.

(ii) Partial self-management. Certain management and/or supervisory services contracted from a technical service organization, housing authority, or management firm, etc. If this additional assistance does not enable the cooperative to manage itself, then the ultimate solution will have to be contract management.

(iii) Contract management. Professional services contracted for the day-to-day supervision of cooperative operations. The board of directors would develop the policies which would then be administered by the management agent.

(h) *Cooperative membership fee.* Cooperative housing is a form of homeownership. In order to promote a commitment from prospective members, cooperatives will require a membership fee. The membership fee established by the board of directors will be equal to one month's occupancy charge. Once the fee has been established, that amount will be uniformly applied to all members. Members unable to pay a cash membership fee should be permitted to make monthly payments without interest, until the membership fee is paid; however, a cash payment of at least $25 should be required at occupancy. The period of payment on the membership fee should not exceed 12 months.

(i) *Cooperative limited equity.* (1) RCH loans will only be made to cooperatives which limit the accumulation of equity. The limitations are designed to maintain unit availability for low-income people. In addition, all prospective members must have received, prior to becoming an actual member, a statement of the objectives of the cooperative, debts and a declaration describing limited equity and what it will mean to them. Exhibit H of this subpart will be used for this purpose.

(2) Inflation equity which accrues on cooperative property is not considered part of members' limited equity and will

not be taken from the project when a member vacates the project.

(j) * * *

(2) RA may be provided to eligible tenants and members in eligible projects in accordance with Exhibit E to Subpart C of Part 1930 of this chapter.

(3) At least 95 percent of RA units available for newly constructed projects must be used to assist very low-income tenants and members. Up to 5 percent can be used for low-income tenants and members.

(4) Cooperative members must have sufficient incomes to pay their management reserve charge. RA will not be used for this purpose.

* * * * *

(l) *Eligibility for occupancy.* Loans will be made on the basis of the housing being occupied by eligible tenants and members as defined in § 1944.205 of this subpart. Eligible tenants and members must meet the requirements of Exhibit B of Subpart C of Part 1930 of this chapter.

* * * * *

(m) *Tenant and member certification.* Initial certification and recertifications will be executed on Form FmHA 1944–8, "Tenant Certification," in accordance with Exhibit B to Subpart C of Part 1930 of this chapter.

* * * * *

(r) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 and Executive Order 11988, are applicable to FmHA authorities permitting financing of housing now located in, or to be located in, special flood or mudslide-prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) and Subpart G of Part 1940 of this chapter will apply.

* * * * *

(s) * * *

(3) Except as otherwise permitted by paragraph (s)(6) of this section, housing projects must be located in residential areas as part of established rural communities where essential public facilities (such as schools, hospitals and generally central water and sewer systems), and services (such as shopping, medical, and pharmaceutical) are readily available in close and convenient proximity to the site. Public facilities and services must be adequate to support the needs of the tenants and members and the housing project. (See FmHA Instruction 1922–B, § 1922.55.)

* * * * *

(5) Noncontiguous rental sites.

* * * * *

(6) * * *

(i) Essential public facilities (such as schools, hospitals and generally central water and sewer systems) and services (such as shopping, medical and pharmaceutical) must be readily available in close and convenient proximity to the site and must be adequate to support the needs of the tenants and members and the housing project.

* * * * *

(iii) Evidence must be presented from the local governing body verifying that the community has adopted, through resolution or other official act, the community development and housing plan referenced in paragraph (s)(6)(ii) of this section. A copy of the adopted plan should be made available to FmHA. While it is not necessary that the downtown redevelopment/revitalization area be formally designated as an urban renewal or other similar area, evidence supporting a local determination that the downtown business area meets the criteria established in the community development and housing plan must be maintained in the locality's records. Documentation received from the local governing body must also identify the site or structure involved in the applicant's proposal as part of or essential to the downtown redevelopment/revitalization area.

(iv) Evidence must be presented to FmHA verifying the intended commitment of public and private resources which will be available for completing any other integrally related redevelopment/revitalization activities being undertaken in the downtown business area along with the applicant's proposed project.

* * * * *

(u) *Concurrence with construction contracts.* A construction contract between the borrower and contractor for development of a project will contain a provision that it is not in full force and effect until the State Director concurs in writing in the form, content and execution of the contract. Before loan closing or before the start of construction, whichever occurs first, the State Director or his/her delegate will concur with the contract form, content and execution by including the following paragraph at the end of the contract:

* * * * *

(w) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Public bodies and agencies which have the power of eminent domain and/or condemnation must comply with the requirements of this Act. The applicant must provide assistance for relocation of displaced persons from a site on which a project will be located. FmHA loan funds may be increased over and above the appraised value of the property to cover costs incurred in the relocation of displaced persons. Until instructions are published by the National Office, the Department regulations found at Part 21 of this chapter should be followed and the National Office should be consulted for guidance in developing an RRH or RCH loan for a project affected by this Act. Generally, if there are alternative sites of equal quality which meet the Agency's requirements, the site with the least relocation impact will be selected.

(x) * * *

(1) As evidence of market feasibility, an applicant that proposes a project which is expected to use FmHA RA units will only be required to demonstrate that a market exists for tenants or members eligible for the RA.

* * * * *

25. Section 1944.221 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 1944.221 Security.

(a) * * *

(1) A second mortgage will be taken on a site developed with prior loan(s) when a subsequent loan is made to complete or finish out units on the site or when a second initial loan is made to develop units on a contiguous site.

* * * * *

(b) *Financing Statement.* To secure the FmHA loan, each borrower will execute Form FmHA 440–25, "Financing Statement," and a security agreement at loan closing pledging all revenue from the housing project. This includes any FmHA RA payments, State or private RA payments and/or rent or occupancy payments.

* * * * *

26. Section 1944.222 is amended by revising paragraphs (a), (b)(1), (d), (f), (k)(1) to read as follows:

§ 1944.222 Technical, legal and other services.

(a) *Appraisals.* When real estate is taken as security, the property will be appraised by the multiple housing appraiser or a designated appraiser authorized to make real estate appraisals. If the security involves two or less units, the property will be appraised under Subpart C of Part 1922 of this chapter. For security involving more than two units, the appraisal will be made under Subpart B of Part 1922 of this chapter (available in any FmHA office). Form FmHA 426–1, "Valuation of Buildings," will be completed to show the depreciated replacement value of all the buildings existing or to be

constructed on the property to be taken as security.

(b) * *

(1) Housing and related facilities will be planned and developed in accordance with Subparts A and C of Part 1924 of this chapter. The housing will be designed to meet the needs of the types of persons who will likely occupy it.

* * * * *

(d) *Compliance with Federal, State and local codes, regulations and ordinances.* Planning, construction and operation of housing financed with an RRH or RCH loan will conform with applicable laws, ordinances, codes and regulations (including any licensing required governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, sanitation, use and occupancy), and must meet all applicable laws and statutes pertaining to the operation of a facility in which some of the tenants may require some supervision and central services.

* * * * *

(f) *How to apply for a rural rental or rural cooperative housing loan.* Exhibit A may be used as a guide for applicants applying for loans. Extra copies may be obtained from FmHA.

* * * * *

(k) * * *

(l) The provisions of Subpart A of Part 1924 of this chapter pertaining to surety bonds are applicable to RRH and RCH loans. When interim financing is used during the construction period, the decision concerning whether or not to require surety bonds is the interim lender's. If the interim lender decides not to require surety bonds, a bond waiver is not required from the National Office.

* * * * *

27. Section 1944.223 is amended by revising the section heading and the introductory text, the introductory text of paragraph (a), and the introductory text of paragraph (e)(2) to read as follows:

§ 1944.223 Supplemental requirements for manufactured home project development.

This section includes additional provisions that apply to the making of loans for manufactured home rental and cooperative project development. This section will apply in addition to all other applicable requirements contained elsewhere in this subpart. All references in this subpart to projects and housing for rent to eligible tenants will also mean the rental of sites with manufactured homes within a rental project development.

(a) *Eligible projects.* When a loan is closed on a manufactured home project, the borrower will have constructed and completed, pursuant to a commitment given in accordance with § 1944.235(c)(2) of this subpart, such project designed principally for rental or cooperative use for manufactured homes, and conforming to the development, installation and set-up requirements of Exhibit J to Subpart A of Part 1924 of this chapter.

* * * * *

(e) * * *

(2) Manufactured home projects will be designed to provide for a desirable residential environment. Innovative and imaginative design is encouraged. Stylized patterns and monotony will be avoided. All property improvements will relate to the individual characteristics of the land. The project, including structures, streets, and all site improvements, should be harmoniously, efficiently and conveniently arranged in relation to the topography and the shape of the property.

* * * * *

28. Section 1944.231 is amended by revising the introductory text, the introductory text of paragraph (a)(4), (a)(9)(i)(C), the introductory text of paragraph (b)(3), (b)(5)(i), (b)(5)(ii), (c)(2), and (c)(3)(i) to read as follows:

§ 1944.231 Processing preapplications.

Preapplications will be processed in accordance with this section to assure that loan funds are used, to the extent possible, to provide housing for eligible persons in need of adequate housing. Preapplication information is used to determine the applicant's eligibility, project feasibility and priority for available funds, thereby eliminating proposals which have little or no chance for funding in the near future. Information necessary in a preapplication consists of Form AD–621, "Preapplication for Federal Assistance," and all additional information and material outlined in Exhibit A–6. Preapplications should be filed in the FmHA District Office.

(a) * * *

(4) All RRH preapplications determined eligible and feasible by the District Director will immediately be rated in accordance with the priority processing system established in this subpart. Processing of loan requests within annual allocations will be based on the priority points received. Since the market for RCH housing projects is not the same as for RRH, the ranking criteria will not apply for cooperative housing proposals. RCH preapplications will be handled in accordance with § 1944.231(b)(3) of this subpart.

* * * * *

(9) * * *

(i) * * *

(C) Selected preapplications in excess of the District Director's approval authority and all RCH preapplications will be submitted to the State Office for review. The applicant will be notified in writing of this action.

* * * * *

(b) * * *

(3) Selected preapplications that exceed the State Director's approving authority will be sent to the National Office for evaluation, authorization and guidance. All cooperative housing loan preapplications, regardless of the amount, are to be submitted to the National Office. Funding for RCH loans will be allocated from a cooperative housing reserve in the National Office. When preapplications are submitted to the National Office, the following information must be included in the submission:

* * * * *

(5) * * *

(i) After reviewing the priority rating of the RRH preapplication, the State Director should rank and record the points earned on Form FmHA 1905–11. This form will be maintained in the State Office.

(ii) The State Director will select the highest ranking RRH preapplications up to the prescribed processing levels for the State. Applicants having eligible preapplications that do not rank high enough and future applicants having eligible preapplications will be notified through the District Office, using Form AD–622, of their eligibility but advised that processing priorities and current funding levels will not permit further processing of their preapplications at this time. These preapplications will be ranked numerically based on their rating. As applications are approved, withdrawn or rejected and/or annual allocations increased which permit further authorizations, the applicant having the preapplication with the next highest numerical ranking will be contacted. If the factors supporting the ranking still exist, authorization to develop an application will be given.

* * * * *

(c) * * *

(2) Applicants whose preapplications cannot be further processed because they lack sufficient priority, or because RCH funds are not available, will be so notified. Applicants should be advised that their preapplication will be retained and considered for future funding based

on its rating. If funding is not authorized within one year from the date of the Form AD–622, applicants will be notified in writing that their preapplication will no longer be considered unless it is resubmitted or updated. In addition, until loan funds are available, applicants will be advised against incurring obligations for legal, architectural and engineering work, perfecting interests in land rights and inviting construction bids or making other commitments which cannot be fulfilled without loan funds.

(3) * * *

(i) "The review action taken by FmHA is based on representations made in your preapplication presented to FmHA. Any changes in approximate project costs, size or scope of the project, rental (or occupancy) rates to the tenants (or members) or subsidy costs to the Government, scope of services, sources of funds, or any other significant changes in the project or applicant must be reported to and approved by FmHA in writing."

* * * * *

29. Section 1944.232 is amended by revising the introductory text, the introductory text of paragraph (a)(2), (a)(2)(i), and (b) to read as follows:

§ 1944.232 Rental assistance (RA) from sources other than FmHA.

RA from sources other than FmHA may be used in new or existing RRH or RCH projects. It may be used alone or may be combined with FmHA RA.

(a) * * *

(2) A copy of the proposed RA agreement, which is the instrument of agreement involving the tenants or members, owner and provider of assistance. FmHA will not be a party to the RA agreement nor have any responsibilities under the agreement. The RA agreement must state that:

(i) The payments should be paid directly to the tenants or the owner, who must advise the tenants of the amount and source of the assistance through the lease or a supplement to the lease. Payments should be paid directly to members or to the board of directors of a cooperative in accordance with the amount required by the occupancy agreement.

* * * * *

(b) FmHA will provide reasonably required information including the tenant or member eligibility certification needed to execute the provisions of the RA Agreement and the memorandum of understanding.

* * * * *

30. Section 1944.235 is amended by revising the introductory text of paragraphs (c)(1) and (c)(2), the introductory text of paragraph (h), (h)(1) and (h)(3), to read as follows:

§ 1944.235 Actions subsequent to loan approval.

* * * * *

(c) * * *

(1) *Interim financing.* When the amount of the loan exceeds $50,000, the applicant should obtain interim financing from commercial or public sources for the construction period if it can be obtained at reasonable interest rates. Interim financing will be obtained to preclude the necessity for multiple advances of FmHA funds. Interim financing will be used subject to the following:

* * * * *

(2) *Multiple advances of loan funds.* If interim financing is not available and the applicant supplies such evidence, multiple advances will be used subject to the following:

* * * * *

(h) *Prerent-up or preoccupancy conference.* To promote proper planning for initial rent-up and occupancy, the District Director will meet with the applicant and management firm, if any, soon after loan approval. Among the items that should be discussed are the advertisement of available units, the affirmative fair housing marketing practices, tenant eligibility and tenant selection criteria. The same effort to achieve adequate marketing results will be required for RCH loans except that its completion will be necessary at the preapplication stage.

(1) The District Director will review the applicant's marketing plan to determine that it is complete and all supplemental information is provided. If the plan needs to be modified before marketing activity begins, approval must be granted from the official authorized to approve the loan. The District Director will review the approved operating budget to determine if it is still adequate for the initial operating period. If it is not adequate, a change in the rent or occupancy charge will be made according to Exhibit C of Subpart C to Part 1930 of this chapter.

* * * * *

(3) Prior to initial occupancy by any person, the District Director and the applicant will reconvene to assess implemented marketing activity by thoroughly reviewing the marketing plan, anticipated occupancy results and the extent of achievement of plan objectives. If original marketing concepts prove to be less than effective and/or if there are changes in the housing market, the applicant may be required to modify the marketing plan for the project. If the District Director determines that the applicant is in noncompliance with the plan and a modification to the plan is not warranted, the matter will be referred to the FmHA Administrator, attention Equal Opportunity Staff Director, through the State FmHA compliance officer.

31. Section 1944.236 is amended by revising paragraphs (a), (b)(5), (c)(3), (c)(6), and (e)(1), to read as follows:

§ 1944.236 Loan closing.

(a) *Applicable regulations.* RRH and RCH loans will be closed in accordance with Part 1807 of this chapter (FmHA Instruction 427.1) and any State supplements. Loan dockets for organizations and, in special cases, dockets for individuals will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization or individual applicant may use any designated attorney or title insurance company to close the loan in accordance with the applicable loan closing instructions if the attorney or title insurance company and its principals or employees are not members, officers, directors, trustees, stockholders or partners of the applicant entity. Nonprofit organizations may use a designated attorney who is a member of their organization if the cost is in accordance with § 1944.212(j) of this subpart.

(b) * * *

(5) For all section 515 RRH and RCH loans, the following language will be included in the mortgage:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 515 of Title V of the Housing Act of 1949 and FmHA regulations then extant during this —— (15 years for unsubsidized and 20 years for subsidized loans) year period beginning —— (the date the last loan on the project is closed). No person occupying the housing will be required to vacate prior to the close of such —— (15 years for unsubsidized and 20 years for subsidized loans) year period because of early repayment. The borrower understands that should an unsubsidized project be converted to subsidized within 15 years from the date the last loan on the project is closed, that the period will be increased by 5 years. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing or that Federal or other financial assistance provided to the residents of such housing will no longer be provided. A tenant or member may seek enforcement of these provisions as well as the Government.

(c) * * *

(3) Payments on loans will be scheduled on the note in accordance with the FMI and as provided in § 1944.215(d) of this subpart.

* * * * *

(6) All loans to be secured by revenue bonds or other forms of security other than a real estate mortgage or deed of trust will be sent to the National Office prior to loan approval with all necessary information for review and further instructions.

* * * * *

(e) * * *

(1) A loan is considered closed when the security instrument is filed of record or, if no security instrument is filed of record, when the loan funds are deposited in the supervised bank account or otherwise made available to the borrower after the borrower executes and delivers the note and any other required instruments.

* * * * *

32. Section 1944.237 is amended by revising the heading of the section and paragraph (a) to read as follows:

§ 1944.237 Subsequent loans.

(a) A subsequent loan is a loan made to an applicant/borrower to complete, improve, repair and/or expand the project initially financed by FmHA.

* * * * *

33. Section 1944.239 is amended by revising the heading and the introductory text to read as follows:

§ 1944.239 Complaints regarding discrimination in use and occupancy of RRH and RCH.

Any tenant or applicant for occupancy or use of RRH, RCH or related facilities who believes he/she has been discriminated against because of age, race, color, religion, sex, marital status, handicap or national origin may file a complaint with the Secretary of Agriculture (or with the Office of Equal Opportunity), U.S. Department of Agriculture, Washington, DC 20250. If a complaint is made to an FmHA County, District or State Office, it should be directed to the Office of Equal Opportunity (USDA-OEO) by the FmHA employee in charge that office. If the complaint is sent to USDA-OEO by a County or District Office, the State Director will be made aware of the complaint.

* * * * *

34. Section 1944.240 is revised to read as follows:

§ 1944.240 Exception authority.

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the accomplishment of the purposes of the program or result in undue hardship by applying the requirement. The Administrator may exercise the authority at the request of the State Director. The State Director will submit the request supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated. Exception to any requirement may also be initiated by the Assistant Administrator for Housing.

35. Exhibit A to Subpart E is revised to read as follows:

Exhibit A—How to Bring Rental and Cooperative Housing to Your Town

Contents

I. Introduction
II. Applying for a Loan
III. Review of the Preapplication
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A–9 Information to be Submitted with Application for a Rural Rental Housing (RRH) and a Rural Cooperative Housing (RCH) Loan

I. Introduction

A. Most areas in rural America need more adequate rental housing. Some people with modest incomes live in impoverished housing that is cold in the winter and hot in the summer because adequate housing at a reasonable rent is not available. Other households that prefer to rent have the choice of either commuting many miles to work or living in the substandard rental housing that is available in small rural communities. To help reduce this rental housing shortage, the Farmers Home Administration (FmHA) finances rental housing in rural communities.

B. To augment the choice of living accommodations available to modest income persons, FmHA also provides financing for cooperative-type housing units. Although this kind of housing unit is appropriate only to a particular group of persons, it also serves to help reduce the existing housing shortage in rural communities. Nonprofit organizations, other types of organizations and individuals may qualify for these housing loans. Information about the loans is available at the local FmHA office.

C. This handbook will assist interested persons and groups in applying for a rural rental or cooperative housing loan. It also briefly explains requirements regarding the construction and operation of the housing.

D. The basic guidelines in this handbook apply to all applicants; however, some requirements will vary depending on the size of the project and whether the applicant is a nonprofit organization, other type of organization, an individual, or a nonprofit cooperative.

E. The objective of the FmHA housing loan program is to provide credit for housing that serves the needs of eligible very low-, low-, and moderate-income permanent residents.

F. Successful housing depends on the existence of the following three important conditions:

1. There must be a need for the housing to be built.

2. The housing must fit the needs of prospective tenants or cooperative members from the standpoint of location, design and cost.

3. The applicant must provide good management.

G. An applicant for a loan must provide adequate information to FmHA to show that these basic conditions can be met.

II. Applying for a Loan

A. An individual, organization or group organizing to provide housing may apply for an RRH loan through the local FmHA District Director serving the area where the housing will be located.

B. The applicant should read FmHA Instruction 1944–E before applying for a loan. The applicant also should discuss the proposed housing with the District Director before completing a preapplication.

C. Applying for a loan begins with a "Preapplication for Federal Assistance" on Form AD–621. Included with the preapplication form should be the supporting material or information listed in Exhibit A–7. This information will enable FmHA to determine:

1. The eligibility of the applicant;

2. The feasibility (economic, environmental and architectural) of the proposed housing; and

3. That prospective cooperative members have read and understand their responsibilities as outlined in What is Cooperative Housing? before agreeing to a cooperative housing project.

4. The suitability of prospective members to cooperative life; and

5. Whether the proposed housing can appropriately be financed by FmHA.

D. This information usually can be furnished by the applicant without hiring extensive professional services. It should be factual and specific based on objective investigations and realistic estimates.

III. Review of the Preapplication

A. If the proposal exceeds the District Director's approval authority, he/she will submit the docket to the FmHA State Director for consideration. If the proposal exceeds the

State Director's approval authority, he/she will send the docket, including comments and recommendations of the District and State Office staffs, to the FmHA National Office in Washington, DC for review. All cooperative housing proposals will be sent to the National Office for review.

B. The completeness and accuracy of information submitted with the preapplication is especially important when reviews are necessary by FmHA offices remote to the proposed site and without direct knowledge of conditions and circumstances involved with the project. The description of the planned housing must be clear, complete and concise to ensure timely reviews by FmHA.

C. When the reviews are completed, the District Director will notify the applicant, using Form AD-622, "Notice of Review of Preapplication Action," of FmHA's decision.

If it appears a loan can be made, the District Director will explain the additional steps that will be required. If favorable action cannot be taken on the preapplication, the District Director will explain why and may be able to suggest changes to permit a loan to be made.

IV. Developng the Loan Docket

A. When an applicant is authorized to submit a formal application, the District Director will review the items required in Exhibit A-8. The amount of information required will vary based on the complexity and size of the proposed project. The District Director will also provide forms and guides to assist the applicant in recording required information. Some of the guides are included as exhibits in this handbook. The applicant is responsible for providing the information required. The District Director will assemble this information and complete the docket.

B. The following information will be helpful in developing a loan docket. The first two items are applicable only to nonprofit organizations. The other items apply to any applicant. In addition, the requirements of Exhibit A-7 of this instruction must be met when developing a preapplication and the requirements of Exhibit A-9 must be met when developing an application.

1. *Getting organized if applicant is a nonprofit organization and has not adopted articles of incorporation and bylaws.*

a. *Steering committee or sponsor.* The group may choose a steering committee or, in the case of a cooperative, a sponsor to act for it. An attorney will usually be required to advise the organization on incorporation and assist in developing the loan application. The steering committee, or sponsor, should select an attorney who is interested in the proposed housing and will render the necessary services promptly for a reasonable fee.

b. *Articles of incorporation and bylaws.* FmHA has developed model articles of incorporation and bylaws for nonprofit organizations. The steering committee, or sponsor, should arrange for the District Director to meet with the attorney. The District Director will give the attorney copies of the FmHA model articles of incorporation and bylaws and explain FmHA requirements. Separate bylaws have been developed for cooperatives and for rental housing organizations.

c. *Attorney's fees.* Reasonable attorney's fees may be included in the FmHA loan. A written agreement between the applicant and attorney is required. See Exhibit A-1 for a sample copy of an agreement.

d. *Board of directors.* The steering committee, or sponsor, usually selects the incorporators for the corporation. The board of directors is responsible for conducting the corporation's business, including obtaining the loan and providing overall management after the housing is completed.

2. *Obtaining broadly based membership for rental housing.*

a. A nonprofit corporation applying for a loan must have and maintain a broadly based local membership, including leaders in the community, representing a variety of interests in the community. The members may be individuals or organizations but each member is limited to one vote.

b. The purpose of the broadly based membership requirement is to obtain community support, provide enough members to be able to rotate officers and members of the board of directors, protect the Government's financial interest as mortgagee and provide assurance that the housing will be a success and the purpose of the loan carried out.

c. In RRH loans made to nonprofit organizations and public bodies, there is no profit incentive. The term of the loan may be for as long as 50 years. Therefore, factors such as the prospect for continuous competent management and supervision, maintenance and adequate community support of the housing project over the expected life of the loan are important.

d. A membership list showing the names and addresses of each member should be maintained by the secretary of the organization.

(1) *Number of members required.* The organization should have at least 25 members. The number of members may be decreased for projects with less than 25 units.

(2) *Contributions by members.* Nonprofit corporations may require a membership fee or ask prospective members for a contribution. This is the method often used by nonprofit corporation applicants to raise initial operating capital. However, no such fee or contribution can entitle a member or prospective member to a preference in occupancy of the housing.

3. *Cooperative membership.*

a. Only those persons who will reside in the cooperative housing will be members of the cooperative. The composition of the board of directors will be drawn from that membership, initially by appointment and later by election from the general membership. The board should be composed of at least 5 members.

b. The board of directors, with assistance from the adviser to the board (discussed in a later section), will devise the rules and regulations under which the cooperative will operate. Additionally, the board will be responsible for management of the cooperative.

c. A membership list showing the names and addresses of each member will be maintained by the secretary of the cooperative.

d. Cooperative membership will require the deposit of a membership fee by each member as outlined in § 1944.215(h) of this subpart. The fee will be retained by the cooperative for as long as the person remains a member of the cooperative. The fee will be refunded to the person when membership is terminated.

4. The applicant should communicate with officials of the community early in the development of the proposal to explain the benefits of the proposed housing to the community. This meeting will serve to remove the uncertainty of the impact of the housing on the community and may aid in a timely processing of the preapplication. The support of community officials is helpful in obtaining environmental clearances, possible zoning changes, favorable taxation, etc.

5. *Initial operating capital.*

a. All applicants must have enough initial operating capital to get started. When justified, FmHA may include these funds in a loan made to a nonprofit organization or public body. Initial operating capital should be sufficient to pay such costs as property and liability insurance premiums, fidelity bond premiums when the applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction and other initial expenses.

b. At least 2 percent of the total development cost of the project is required for initial operation and maintenance costs. The applicant can determine the amount required by working out a detailed budget of income and expenses for the period of time until the housing is ready for occupancy and rental income will be available. The actual budget may indicate that more than 2 percent is needed.

6. *Analysis of market to determine demand for rental housing.*

a. Applicants should discuss with the District Director the type of market analysis that will be needed. Applicants must comply with paragraph II of Exhibit A-7 when preparing market information.

b. Exhibits A-2 and A-3 are sample forms which may be modified by the applicant to assist in the assembly of the information for the market analysis.

7. *Planning to serve the market.*

a. Planning the housing to serve the market in the community involves more than obtaining a blueprint of the building. It requires a careful evaluation of conditions in the community and careful planning to assure that the result will be good rental housing designed for independent living at a cost eligible tenant persons can afford. Well planned housing is:

(1) Convenient, attractive, safe and comfortable.

(2) Easily maintained.

(3) Located where tenants or members can have easy access to the goods and services they require for daily living.

(4) Planned to meet all codes, regulations, and acceptable construction practices.

(5) Priced to rent for no more than the prospective tenants can afford to pay.

(6) Priced within an affordable range of its prospective tenants and members.

(7) Energy efficient and complies with FmHA's thermal performance standards.

b. The District Director and State Office architect can provide information that will help the applicant in planning the housing.

8. *Selecting an architect.*

a. The services of an architect are required for all housing projects which have more than five units. The cost of a registered architect/engineer may be included in the loan.

b. Before anything more than schematic drawings are prepared, the applicant and its architect, the FmHA architect/engineer and the District Director should arrange a meeting. This meeting will acquaint the applicant's architect with the purposes of the housing and FmHA's requirements. This will be helpful in eliminating misunderstandings. Among the topics that should be discussed are:

(1) Objectives of the rental housing program.

(2) Design requirements that will produce good housing at reasonable cost.

(3) Stages at which FmHA must review plans and specifications.

(4) Services the architect will be expected to perform.

(5) Agreement between architect and applicant.

9. Selecting a site.

a. The location of the housing is an important art of planning to serve the market. Tenants. Occupants should have easy access to required services. A desirable residential setting within a rural community is essential.

b. Site cost is also important. The total cost of the site, including the cost of improvements and the price of the land, must be considered. Both may be included in the loan. However, loan funds made available to purchase land may not exceed the present market value of the land in its present condition as determined by an FmHA appraisal.

c. Before buying a site, the applicant should consult the architect to determine the suitability of the site for the proposed housing. The applicant must consider the site requirements detailed in paragraph 111 of Exhibit A–7 of this instruction. The applicant should not enter into any firm agreement to buy a site with the expectation of receiving an FmHA loan without consulting with the District Director and prior to the Agency's completion of the environmental impact review.

10. Drawings, specifications and cost estimates.

The size, complexity and cost of rental housing projects can vary from a duplex located on a small building lot to a complex of buildings located on a site containing several acres. The applicant must provide drawings and specifications in accordance with paragraph IV of Exhibit A–7 of this instruction.

11. Budgets.

a. The initial budget should cover the period from the date the first construction expenses are incurred until the end of the applicant's first fiscal year following completion of the housing. After the final cost estimate has been made and the amount of the loan needed has been determined, a budget for a typical year should be developed.

b. This budget should be based on a typical annual operation after the project is occupied. Budgeting is an important part of the management. The applicant should spend enough time working on it to assure that the estimates are realistic. Budgets will be required each year until the FmHA loan is repaid in full. The budget serves several purposes including:

(1) Helps determine rental or occupancy rates.

(2) Indicates financial soundness.

(3) Serves as a guide for paying expenses.

c. Form FmHA 1930–7, "Statement of Budget and Cash Flow," and its accompanying Exhibit A–6 are a sample budget form and utility allowance form.

12. Loan resolution or loan agreement.

When the applicant is a corporation or an individual applying for a loan above certain amounts, a copy of the required loan resolution or loan agreement should be obtained from and discussed with the District Director before the loan docket is developed. Among other things, this document outlines how the income from the housing is to be used. These requirements should be understood at the time the budget is developed.

13. Rental management plan.

A detailed management plan will be developed which will outline the basic policies and procedures to be followed and the duties of the officers and employees. The applicant must manage the project in accordance with the requirements of Subpart C to Part 1930 (FmHA Instruction 1930–C).

14. Rental manager and caretaker.

a. A comprehensive management program is essential to the successful operation of the project. A carefully written plan should be developed in accordance with Exhibit B of FmHA Instruction 1930–E.

b. The use of an onsite manager should be based on the size of the project. The manager should be readily available to the tenants. The manager might be one of the tenants or a member of the board of directors of a nonprofit corporation. The manager's duties should be specified in the management plan.

c. The board of directors of a corporation is responsible for overall supervision and management of all its affairs. The board should delegate actual operating and management responsibility to committees or individuals and meet often enough to see that enterprise is being managed successfully.

15. Cooperative self-management.

a. The success of cooperative housing will depend on how well the members are able to manage the cooperative themselves with assistance from the adviser to the board. The cooperative must first develop and designate those areas of responsibilities to be delegated to committees, a list of the committees, and the functions of the committees. A copy of this information will be provided to each prospective member.

b. Participation on committees by members will be on a voluntary basis. However, if it appears a committee does not have sufficient numbers for it to adequately operate, then additional members will be expected to volunteer their time and talents. Thus, participation on committees is voluntary up to a point. If a member has experience in a particular area, that member should be encouraged to join the committee which will benefit from his/her experience. The cooperative will need a total commitment from the membership in order to assure success of self-management. Examples of the types of committees which may be considered are:

(1) Maintenance
(2) Groundskeeping
(3) Communications
(4) Budget and finance
(5) Rules
(6) Recreation
(7) Home service

c. If the cooperative is not successful in managing itself, professional management will be hired by the cooperative.

16. Occupancy policies

a. Applicants should review carefully the occupancy requirements with the District Director. Particular attention should be given to the following requirements:

(1) The housing must be open to all eligible tenants persons regardless of race, color, religion sex, National origin, age, handicap or marital status.

(2) The incomes of tenants and the initial incomes of cooperative members must be within the maximum income limits approved by FmHA.

b. Additional guidance concerning occupancy in congregate housing projects can be found in Exhibits B–10 and B–10A to Subpart C of Part 1930 (FmHA Instruction 1930–C).

17. Cooperative board of directors.

The board will essentially be the backbone of the cooperative structure. In this capacity it will be responsible for establishing the policies and procedures which will govern the operation of the cooperative and for enforcing those policies and procedures. The board will be composed of members of the cooperative with the same interests and concerns as the general membership. For instance, instituting an increase in the occupancy rates or terminating a member's right to cooperative ownership because of serious repeated violations of cooperative rules and regulations will be the types of actions which are taken by the board. The members of the board will be affected by these same decisions since they must adhere to the same rules and regulations as the rest of the cooperative community.

18. Adviser to the board.

Resident(s) of the community who is not a member of the cooperative will serve as an adviser to the board during the period of formation and until the board of directors has effectively demonstrated its ability to manage the cooperative. At that time, the adviser will maintain close contact with the cooperative

and provide advice and assistance as needed. The adviser will closely monitor the cooperative for at least 2 years after it becomes its own manager. This time may vary, depending on the circumstances. The adviser must be very carefully selected to ensure that adequate guidance is given to the board. The adviser must be able to meet certain criteria in order to provide the best possible counsel. The Qualifications for an Adviser to the Board, the Adviser Responsibilities, and Relationship of Adviser to Members, found at Exhibits E, E–1, and F of this subpart, should be used in evaluating potential advisers. While it may not be possible to find some one individual or individuals who can meet all the requirements outlined, the criteria should be used as guides in determining the best candidate. FmHA will provide counsel to the cooperative during the interview period and must approve the selection of the individual(s). We recognize the adviser will require compensation for services rendered, however, the amount paid should not severely limit the amount of patronage capital accruing to the members.

19. Management reserve.

The board's ability to manage the cooperative will determine whether members will receive equity from membership in the cooperative. A set rate for professional management will be assessed each month as part of the occupancy rate and will be maintained in a separate reserve account. If the cooperative is successful at managing its own affairs during the year, the amount accumulated in the reserve will be assigned equally to each member at the end of the year as patronage capital. This same procedure will be followed each year, allowing a buildup of patronage capital. If professional management is hired by the cooperative to correct deficiencies which have arisen from poor self-management, further accumulations to the management account will then be used to pay for professional management and the amount being accrued to the members' patronage capital account will be suspended. If the amount being accumulated for management is not sufficient to meet the needs, occupancy rates will be increased to cover the expense of management. When the cooperative begins to again manage itself, the assessment for the management reserve will resume as previously stated. Any other income remaining at the end of the year will also be assigned as patronage capital. Assignment from both of these sources must be accomplished in accordance with the IRS ruling concerning patronage distribution. FmHA rental assistance proceeds are not to be used to make the member's contribution to the management reserve account. Therefore, the member must have sufficient income from which to make this payment. If it becomes necessary to hire full-time professional management, then the management fee will be considered part of the shelter cost and thus eligible for RA. FmHA will assist the adviser to the board in determining if and when professional management will be hired in lieu of self-management. In the event the adviser and FmHA are unable to reach an agreement regarding the hiring of professional management, the ultimate decision will rest with FmHA. Compensation paid to the adviser will be shared by members through the deduction of equal amounts from their management reserve payments.

20. Rules and regulations.

The rules and regulations for tenants and members should be developed by the applicant and a copy included in the loan docket.

21. Lease or occupancy agreement.

The applicant should develop an application form for occupancy and a lease or occupancy agreement form in accordance with the requirements of Subpart C of Part 1930 (FmHA Instruction 1930–C). Exhibit J of this subpart is be used as a guide for developing an occupancy agreement.

Copies of these forms should be included in the loan docket.

22. Affirmative Fair Housing Marketing.

In order to promote proper planning for initial rent-up and occupancy, the District Director will meet with the applicant after loan approval, preferably at the preconstruction and/or the prerent-up or preoccupancy conference to discuss the Affirmative Fair Housing Marketing Plan or other similar agreement approved for the project. In the case of a cooperative, the District Director will discuss the Plan at the preapplication stage.

V. Review of the Complete Docket

A. When the applicant has developed the complete loan docket, it should furnish and discuss the information with the District Director. Form AD–625, the information and materials listed in Exhibit A–8 plus FmHA forms provided by the District Director become the loan docket.

B. If the docket is submitted to the State Office for consideration, the State Director will indicate any special requirements that need to be met before loan approval or loan closing.

C. Commercial financing should be used for projects during the interim construction period if available at reasonable rates and terms. FmHA can make a conditional commitment to the interim lender that will loan the funds to finance the construction of the project. The commitment will be conditioned upon acceptable performance by the builder and payment of all construction bills. After the conditions have been met, the FmHA loan will be closed to pay the interim construction indebtedness. Draws on interim loan funds will be made only as needed and will require the joint approval of the applicant and the FmHA District Director.

D. In other cases FmHA can make advances of loan funds for construction, the note and mortgage will be signed by the applicant and the loan funds deposited in a joint bank account at loan closing. The loan funds are disbursed from the bank account as needed. Checks on the account must be signed by the borrower and countersigned by the FmHA District Director.

VI. Construction

The start of construction is the first physical sign that the housing will become a reality. The construction period is a most critical period of time.

A. Competitive bidding.

1. Competitive bidding is recommended and may be required by FmHA in some cases. If required, the State Director's letter sent after the loan is authorized will instruct the District Director to have the applicant or its architect complete the necessary bid documents.

2. The applicant and the architect should invite competent contractors to bid on the housing. If bids are within the estimates, the successful bidder will be selected and the contract for construction will be awarded. During construction, a qualified FmHA representative and the applicant and its architect will inspect the work to protect their respective interests in the project. Payment will be made from the FmHA loan funds, or interim loan funds, according to provisions in the contract.

B. Construction without competitive bidding.

When competitive bidding is not required, the loan docket will include reliable cost estimates or a firm offer to build from a builder selected by the applicant. A contract concurred with by FmHA will be executed by the applicant and the contractor. If full architectural services are obtained by the applicant, inspection of the work will be performed by the architect's staff. The applicant and FmHA will inspect the construction to protect their respective interests in the project. Payments will be made to the contractor in accordance with the terms of the contract.

C. Starting construction.

Construction should not be started until the FmHA loan is closed or the FmHA commitment has been made to the interim lender.

VII. Open House

Promotion of the housing availability should start at least 90 days prior to completion. The applicant may want to create interest in the housing and build up the list of prospective tenants or members by having a dedication ceremony. This will attract attention and remind the local residents of what the housing means to the community. This is especially recommended for housing developed by nonprofit corporations.

VIII. Exhibits

The following exhibits may be used when applicable and, if necessary, adapted to meet the specific needs of applicants.

Exhibit

A–1 Legal Services Agreement
A–2 Survey of Existing Rental Housing
A–3 Rental Housing Survey
A–4 Cooperative Housing Survey
A–5 Rental Housing Survey Summary
A–6 Housing Allowances for Utilities and Other Public Services

A–7 Information to be Submitted with Preapplication for a Rural Rental Housing (RRH) or a Rural Cooperative Housing (RCH) Loan
A–8 Outline of Professional Market Study
A–9 Information to be Submitted with Application for a Rural Rental Housing (RRH) or a Rural Cooperative Housing (RCH) Loan

36. Exhibit A–1 to Subpart E is revised to read as follows:

Exhibit A–1—Legal Services Agreement (For Cooperative or Other Nonprofit Organizations)

Agreement made this____ day of_____, 19____ between the_____, hereinafter called the (owner)(board of directors), and _____, hereinafter called the attorney, witnesseth:

Whereas the (owner)(board of directors) intend to form a cooperative or other nonprofit corporation, hereinafter called the (corporation)(cooperative), to construct and operate a rural housing project in

_____

(Town)

_____

(County)

_____

(State)

and to obtain a loan from the Farmers Home Administration to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the (corporation) (cooperative), and to perform all other customary legal services necessary to the organization, financing, construction, and initial operating of the proposed rural housing project, such services to include but not to be restricted to the following:

1. Prepare and file incorporating papers and supervise and assist in taking other necessary or incidental actions to create the (corporation)(cooperative) and authorize it to finance, construct, and operate the proposed housing project.

2. Prepare for and furnish advice and assistance to the owner, or to the board of directors and officers of the corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation of adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural housing project; (d) special tax treatment applicable to housing cooperatives; (e) necessary construction contracts; (f) preparation of adoption of bylaws and related documents; (g) any other action necessary for organizing the (corporation) (cooperative) or financing, constructing, and initially operating the proposed housing project.

3. Review construction contract, bid-letting procedure, and surety and performance bonds.

4. Examine real estate titles and prepare, review and record deeds and any other instruments.

5. Cooperate with the architect employed by the (owner)(board of directors) in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6. Render legal opinions as required by the (owner) (board of directors) or the Farmers Home Administration, United States Department of Agriculture.

7. (Owner)(board of directors) agree to pay the attorney for professional services in accordance with this agreement, as follows:

_____

_____

The fees to be payable in the following manner and at the following times:

_____

_____

The attorney states and agrees that of the above total fees, _____represents fees for services in connection with the organization and incorporation of the (corporation)(cooperative).

The (owner)(board of directors) and the attorney further covenant and agree that, if upon organization and incorporation, the (corporation)(cooperative) fails or refuses to adopt and ratify this agreement by appropriate resolution within _____ days, this agreement shall terminate and (owner)(board of directors) shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this ____ day of _____ 19____.

Attorney: _____

(Owner)

(board of directors)

_____

_____

_____

_____

_____

* * * * *

Exhibits A–4 through A–8—[Redesignated as Exhibits A–5 through A–9 respectively]

37. Exhibits A–4, A–5, A–6, A–7, and A–8 to Subpart E are redesignated as Exhibits A–5, A–6, A–7, A–8, and A–9, respectively.

38. Exhibit A–4 to Subpart E is added to read as follows:

Exhibit A–4—Potential Cooperative Members

Potential Cooperative Members

Before attempting to answer these questions, please read the Guidelines for Understanding the Principles of Cooperative Housing. Now take time to answer the following questions as honestly as you can.

(Circle yes or no)

1. Are you willing to share the responsibilities required of a cooperative member? yes no

2. If asked, will you serve on the board of directors or on a committee? yes no

3. Are you willing to help in maintaining the cooperative property? yes no

4. Do you now have a better idea of what cooperative housing really is? yes no

5. Do you want to ask more about the cooperative before deciding whether to join? yes no

6. If the answer to question 5 is "yes," will you come to an information meeting to be held in town? yes no

7. Have you answered the questions truthfully? Did you answer "no" to any of questions 1, 2, or 3? If so, this type of housing is not for you. If you are interested, please go on to complete the second portion of this survey.

1. How many persons in your household? adults_____ children_____

2. Approximate annual income from all sources: $_____

3. Are you or members of the household handicapped or impaired and in need of specifically designed housing arrangements? yes no

4. An informal meeting is scheduled for_____a.m./p.m., on_____, 19_____, for the purpose of discussing a proposed_____-unit cooperative planned for this community. At that time a representative of the cooperative will be on hand to answer other questions you may have.

So that we may know how many persons to expect at the meeting, we ask that you give us your name, address, and phone number.

Name— _____

Address— _____

_____

Phone — _____

* * * * *

Exhibit A–5—[Amended]

39. Newly redesignated Exhibit A–5 to Subpart E is amended by removing the word "Rental" from the heading of the Exhibit.

40. Newly designated Exhibit A–7 to Subpart E is amended by revising the heading, the introductory text of paragraph I A, by redesignating paragraphs I B through I G as I E through I J respectively, by adding new paragraphs I B, I C, and I D, by revising paragraphs I E, II A, II B, and II F, by redesignating paragraphs II G and II H as II H and II I, respectively, by adding new paragraph II G and by revising paragraphs II I, IV A, and IV J to read as follows:

Exhibit A–7—Information to be Submitted with Preapplication for a Rural Rental Housing (RRH) or a Rural Cooperative Housing (RCH) Loan

* * * * *

I. * * *

A. Financial statement for Rental Project—Each applicant must submit a current, signed and dated financial statement. The financial statement must reflect sufficient financial capacity to meet the applicant's equity capital and initial operating capital requirements. Applicants may contribute cash, free and clear title to the building site or a combination of both as an equity contribution.

* * * * *

B. Financial Statements for Cooperative Members—Each prospective member must provide a statement of monthly income and expenses showing the repayment of debts and whether those payments are current. The statement must indicate that the person will have the financial ability to meet the monthly occupancy rate requirement, while still meeting other monetary obligations. FmHA Form 1944–38, Application for Cooperative

Housing Assistance, may be used for this purpose. (See FMI for preparation instructions.)

C. The names and addresses of persons who have expressed an interest in becoming members of the cooperative. Signature and date evidencing this interest from each person will be obtained to fully document the need for the cooperative housing. This certification should contain a statement that the prospective member understands the cooperative type of organization and the time and effort each member must spend in its operating and maintenance.

D. For all cooperative projects containing over four units, the applicant must submit an Affirmative Fair Housing Marketing Plan for approval in accordance with 1901.203 of Subpart E to Part 1901. The plan must be prepared in a complete, meaningful, responsive and detailed manner.

E. Evidence Concerning the Test for Other Credit—Applicants other than States or local public agencies must show that other credit is not available at rates and terms that will allow a unit rent or occupancy charge within the payment ability of the occupants. The applicant should provide letters from local real estate lenders stating the amount of loan funds.

* * * * *

II. * * *

A. Economic justification and project size should be based on the housing need and demand from eligible prospective tenants or members who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, temporary residents of a community (such as college students in a college town, military personnel stationed at a military installation within the trade area, or others not claiming their current residence as their legal domicile) should be discounted in determining need and project size.

B. For rental projects of 20 units or more, a detailed study based upon data obtained from census reports, state or county data centers, individual employers, industrial directories or chambers of commerce is required. The study should include:

* * * * *

F. For rental projects of less than 20 units, the need for the housing may be established by obtaining signed expressions of interest from 50 percent more eligible prospective tenants than the number of proposed units. Exhibits A–3 and A–4 or similar forms may be used for the analysis. Statements evidencing a continued need for the units must be included in the analysis of market. These statements should be based on historical population growth taken from census reports or a current housing evaluation by the county. If this type of analysis does not adequately support the need for housing in a questionable market area, FmHA will request that a full market study be prepared. The applicant will provide a written, signed certification that the survey was performed in a manner acceptable to FmHA and that the results are a true portrayal of the survey.

G. For cooperative housing proposals, market feasibility will be evidenced by the names and addresses of prospective members who have definitely affirmed their intention of becoming cooperative members in the proposed project. In the event some persons cannot be accepted for membership for financial or other reasons, the cooperative should obtain more names than the number of proposed units in order to assure adequate feasibility coverage. The Potential Cooperative Members form located at Exhibit A–4 and in What is Cooperative Housing? may be used for this purpose.

* * * * *

I. A schedule of proposed rental or occupancy rates and, in the case of a congregate housing proposal, a separate schedule listing the proposed cost of any nonshelter service to be provided should be included with the market information.

* * * * *

IV. * * *

A. The type of project and structures proposed, such as garden apartments for elderly and handicapped persons; townhouses for low- and moderate-income persons; congregate housing for senior citizens and handicapped persons, or housing designed for cooperative living.

* * * * *

J. A plot plan showing the relationship of the proposed structures, the property lines, streets, utility lines, alleys and adjacent structures and their uses. It should also show proposed off-street parking for the tenants or members and their visitors. Other facilities, such as private and public walks, private drives and recreation areas on and off the property, laundry drying areas, and garbage and refuse holding areas which are sufficient for the period between collections in the neighborhood should be shown.

* * * * *

41. Newly designated Exhibit A–9 to Subpart E is revised to read as follows:

Exhibit A–9—Information to be Submitted with Application for Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) Loans

The following information is to be submitted with Form AD–625, "Application for Federal Assistance (Short Form):"

1. Drawings and specifications, including any special design features for elderly or handicapped persons.

2. A detailed cost breakdown of the project for such items as land and rights-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and on- and off-site improvements. The cost breakdown also should show separately the items not included in the loan, such as furnishings and equipment. This trade-item cost breakdown should be updated just prior to loan approval.

3. Information on the method of construction, the proposed contractor if a construction contract is to be negotiated, and the architectural, engineering and legal services included in the proposal.

4. Satisfactory evidence of review and approval of the proposed housing by applicable State and local officials whose approval is required by State or local laws, ordinances or regulations.

5. If more than 12 months have transpired since the applicant submitted the market analysis, the State Director may require a new one if he/she determines it necessary.

6. The cooperative, or representative thereof, will secure the signatures of prospective members who have affirmed their intention of moving into the project. The cooperative may also secure the membership fee, or a partial deposit of the fee, at this time.

7. For all rental projects containing over four units, the applicant must submit an Affirmative Fair Housing Marketing Plan for approval in accordance with § 1901.203 of Subpart E to Part 1901. The plan must be prepared in a complete, meaningful, responsive and detailed manner.

8. If more than 12 months have transpired since the applicant submitted the dated financial statement, the State Director may require a new one if he/she determines it necessary.

9. Detailed operating budgets showing a schedule of proposed rental or occupancy rates for the first year's operation and a typical year's operation. The first year's budget should show that the applicant has sufficient operating capital on hand or sufficient planned income to pay all operating costs and meet scheduled payments on debts during the planning and construction period prior to occupancy. The typical year's budget should show there will be ample income to pay essential operating costs, meet required debt payments and permit accumulation of required reserves. Form FmHA 1930–7, "Statement of Budget and Cash Flow," and Exhibit A–5 of this Subpart (or similar forms) may be used for this purpose. The operating budgets should be updated if necessary just prior to loan approval.

a. The initial budgets should include an allowance of 10 percent for vacancies, nonpayment of rent or occupancy charge and contingency expenses. The allowance in subsequent year budgets may be adjusted to be consistent with the actual past experience in vacancy, nonpayment of rent or occupancy charge and contingency needed for the project.

b. The budgets should provide for accumulating a reserve at the rate of 1 percent per annum of the amount of the loan until a reserve equal to 10 percent of the loan is reached. Budgets should not include an additional item for depreciation since the reserve account is to provide funds for this purpose.

c. Cooperative budgets should provide for accumulating a management reserve at a rate commensurate with normal management fees appropriate to the area. The reserve should be shown under the management column.

d. All applicable taxes, including Federal and State income taxes, should be included in the budgets and separately identified. If the applicant considers itself tax-exempt, evidence of exemption must be included in the loan docket before the loan is closed. In case of a nonprofit organization whose articles of incorporation and bylaws conform

to Exhibits C and D of this subpart, evidence of exemption from Federal income tax need not be obtained before the loan is closed if the applicant applies for a determination of exemption and agrees in writing to make any changes in its organizational documents that may be required by the Internal Revenue Service (IRS). Information as to Federal income tax exemption may be obtained from the district office of the IRS. An eligible nonprofit organization should ordinarily be able to qualify for Federal income tax exemption under section 501(c)(4) of the Internal Revenue Code.

10. A description and justification of any related facilities to be financed wholly or in part with loan funds.

11. For RRH housing, a statement outlining the proposed manner of management of the housing, such as whether by owner or by hired management firm or agent. Experience and other factors pertaining to the qualifications of the manager should be set forth and will be taken into consideration. If management will be performed by a hired management firm or agent, a copy of the proposed management agreement should be submitted. It must contain the clause stating that it is not in full force and effect until approved by FmHA.

12. For RCH housing, a statement that should the cooperative be unable, after a 12-month period, to show some ability to manage itself without professional assistance, professional management will be obtained and the amount to be accumulated in the reserve account will be used to pay for this service.

13. A management plan which sets forth clear and concise statements of policy concerning management and operation of the project in accordance with the requirements of paragraph V of Exhibit B of Subpart C to Part 1930 of this chapter. A copy of the proposed application for occupancy, waiting lists, lease, rental or occupancy agreement, and rules and regulations governing administration and occupancy should be attached to the management plan. The management plan must be submitted in writing and the applicant must certify that it is in compliance with the requirements of Subpart C to Part 1930 of this chapter.

14. A schedule of any separate charges for the use of any related facilities and, in the case of congregate housing, a schedule of any separate charges for nonshelter services (such as meals, personal care and housekeeping). These schedules should be supported by appropriate operating budgets for services to be provided.

15. When land is being purchased or a building site will be part of a tract owned by the applicant, or in any other case when necessary to clearly identify the property, a satisfactory survey of the land to be given as security prepared by a licensed surveyor will be included in loan docket. If necessary, a new survey will be obtained.

16. For RCH housing, an executed copy of a limited equity agreement which substantially conforms to Exhibit H to this subpart.

17. For RCH housing, a completed subscription agreement which substantially conforms to Exhibit I to this subpart.

Exhibit B to Subpart E—[Amended]

42. Exhibit B to Subpart E is amended by removing the word "rental" in the first paragraph.

43. Exhibit C to Subpart E is revised to read as follows:

Exhibit C—Articles of Incorporation for Rental or Cooperative Organizations (Not for Profit)

We, the undersigned, incorporators, hereby associate ourselves together to form and establish a (corporation) (cooperative) not for profit under the laws of the State of _____.

First: The name of the (corporation) (cooperative) is _____.

Second: The location of its principal place of business in this State is _____, _____ County.

Third: The location of its registered office in this State is _____, _____ County.

Fourth: The name and address of its resident agent in this State is _____, _____ County.

Fifth: This (corporation) (cooperative) is organized not for profit under _____ and the objects and purposes to be transacted and carried on are to promote the general social welfare of the community and for that purpose:

to acquire, construct, provide, and operate (rental) (cooperative) housing and related facilities suited to the special needs and living requirements of eligible occupants as determined by Farmers Home Administration regulations, without regard to age, race, color, religion, sex, marital status, physical or mental handicap (must possess capacity to enter into a legal contract) or national origin; to acquire, improve, and operate any real or personal property or interest or right herein or appurtenant thereto; to sell, convey, assign, mortgage, lease any real and personal property; to borrow money and to execute such evidence of indebtedness and such contracts, agreements, and instruments as may be necessary, and to execute and deliver any mortgage, deed of trust, assignment of income, or other security instrument in connection therewith; and to do all things necessary and appropriate for carrying out and exercising the foregoing purposes and powers.

Sixth: The number of directors shall be prescribed in the bylaws, but shall not be less than five nor more than nine.[1]

Seventh: The (corporation) (cooperative) formed hereby shall have no capital stock. It shall be composed of members rather than shareholders. The conditions and regulations of membership and the rights or other privileges of the classes of members shall be determined and fixed by the bylaws.

Eighth: (Rental Only) The corporation is not organized for pecuniary profit and shall have no power to declare dividends. No part of its net earnings shall inure to the benefit of any member, director, or individual. The balance, if any, of all money received by the corporation from its operations, after payment in full of all operating expenses, debts, and obligations of the corporation of whatsoever kind and nature as they become due shall be used to make advance payments on a _____ owed by the corporation, to lower the lease-rental charge to occupants of the housing, to provide additional housing and related facilities, or for some related purpose.

Eighth: (Cooperative Only) The cooperative is not organized for pecuniary profit and shall have no power to declare dividends. The balance, if any, of all money received by the cooperative from its operations, after payment in full of all operating expenses, debts, and obligations of the cooperative of whatsoever kind and nature as they become due, shall accumulate in an interest-bearing account but be equally assigned to each member as patronage capital.

Ninth: The name and place of residence (post office address) of each of the incorporators and initial directors until the first annual meeting:

Incorporators

_____

_____

Directors

_____

_____

Tenth: (Rental Only) In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more such nonprofit corporations or municipal corporations as may be selected by the board of directors of this corporation, to be used for and devoted to the purpose of carrying on a nonprofit housing project for such rural residents or other purposes to promote the general social welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, either for the reimbursement of any sum subscribed, donated, or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

Tenth: (Cooperative Only) In the event of dissolution of this cooperative, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the cooperative, except members' patronage capital and membership fees, shall be used for providing low income rental housing or other purposes to promote the general welfare of the community. In no event shall any of the assets or property, in the event of dissolution

[1] If the statute under which the cooperative housing project is to be incorporated will permit, it is preferable to state here the minimum number of directors. The actual number can then be stated in the bylaws which are more easily amended if it becomes necessary to change the number.

thereof, go or be distributed to members, except that the membership fee and money accrued to members in their patronage capital accounts shall be paid to members prior to conversion or satisfaction of the Government's debt.

Eleventh: (Cooperative Only) At any time prior to dissolution the member wishes to terminate membership in the cooperative, money which has accrued in the member's patronage capital account and the member's membership fee shall be paid to the member provided the member's occupancy account is not delinquent and that any other charges to which the member is liable are paid.

Twelfth: The duration of the existence of this corporation shall be perpetual.[1]

In testimony whereof, We have here unto subscribed our names on _____ 19____.

_____

_____

_____

_____

(Insert acknowledgement or other form if required by State law.)

* * * * *

29. Exhibit D of Subpart E is amended by revising the heading to read:

Exhibit D—Bylaws (Except Cooperative)

30. Exhibits D–1, E, E–1, F, G, H, and I of Subpart E are added to read as follows:

Exhibit D–1—Bylaws (Cooperative)

Bylaws Of

_____

(A Nonprofit Cooperative Corporation)

Article I

Office

Section 1.01. Principal Office.

The principal place of business of the cooperative in the State of _____ shall be located at _____, County of _____.

Section 1.02. Registered Office and Agent.

Article II

Members

Section 2.01. Eligibility for Membership.

Any natural person who is approved by the cooperative under its rules and regulations by the board of directors shall be eligible for membership, provided that he/she executes a Subscription Agreement and Occupancy Agreement in the usual form employed by the cooperative covering a specific unit in the housing project.

Section 2.02. Approval of Applications for Membership.

All subsequent applications for membership shall be approved at any special or regular meeting of the board of directors, when a quorum is present, by a majority vote of the board members.

[1] Duration should be perpetual, or long enough to cover the period of the loan plus 5 years.

Section 2.03. Membership Certificates.

The board may provide for the issuance, and determine the form of, certificates evidencing membership in the cooperative. Such certificates shall state that the cooperative is organized under the laws of the State of _____, the cooperative's lien rights against such membership as set forth in these Bylaws, shall be signed by the president and the secretary, sealed with the seal of the cooperative, and consecutively numbered. The name and address of each member and the date of cooperative. If a certificate becomes lost, mutilated, or destroyed, a new certificate may be issued upon such terms and conditions as the board may determine.

Section 2.04. Lien.

The cooperative shall have a lien on the outstanding memberships in order to secure payment of any sums which shall be due or become due from the holders for any reason whatsoever, including any sums due under any occupancy agreements.

Section 2.05. Voting Rights.

Each member shall be entitled to one vote on each matter submitted to a vote of the members.[1]

Section 2.06. Patronage Capital.

All funds accruing to the cooperative during the year, above and beyond the costs and expenses of operating the cooperative, shall be assigned to each member on the books of the cooperative as patronage capital at the end of each fiscal year. These patronage capital funds may not be removed from the patronage capital account except in payment to members upon termination of membership. Any member not wishing to renew the Occupancy Agreement will be entitled to receive the patronage capital assigned to the member on the books of the cooperative. Likewise, members terminated because of violation of these bylaws may receive his/her patronage capital pursuant to provisions of section 2.07.

Section 2.07. Termination of Membership.

A member may be suspended or expelled, for violation of rules set forth in the Occupancy Agreement or these bylaws, by the vote of not less than a majority of the board of directors, provided the member has been informed in writing of the charges preferred against the member at least ten days before such meeting. The member shall be given an opportunity to be heard at such meeting. Upon termination of membership rights under the Occupancy Agreement, the member shall be required to deliver promptly to the cooperative his/her membership certificate and Occupancy Agreement endorsed as required by the cooperative. The retiring member then shall be entitled to receive the amount determined in accordance with the provisions of section 2.10 less the following amounts (the determination of such amounts by the cooperative to be conclusive):

a. Any amounts due to the cooperative from the member under the Occupancy Agreement;

[1] In the case of joint membership, each member shall be entitled to cast a one-half vote.

b. The cost or estimated cost of all deferred maintenance, including painting, redecorating, floor finishing, and such repairs and replacements as are deemed necessary by the cooperative to place the dwelling unit in suitable condition for another occupancy; and

c. Legal and other expenses incurred by the cooperative in connection with the default of such member. In the event the retiring member fails, within a 10-day period after demand, to deliver to the cooperative his endorsed membership certificate, the membership certificate shall be deemed to be canceled and may be reissued by the cooperative to a new member.

Section 2.08. Resignation.

Any member may choose not to renew the Occupancy Agreement by notifying the cooperative 4 months in advance of the renewal date.

Section 2.09. Transfer of Membership.

Membership in this cooperative is not transferable or assignable except to the cooperative unless, upon death of a member, his/her membership in the cooperative passes by will or intestate distribution to a member of the immediate family. This is conditioned upon the person's eligibility and approval for membership according to FmHA regulations and by his/her assuming in writing the terms of the Subscription Agreement and Occupancy Agreement within 60 days after member's death and payment of such debts.

Section 2.10. Transfer Value.

Whenever a membership is transferred to the cooperative, the term "transfer value" shall mean the sum of:

a. The membership fee paid by the member on the books of the cooperative, and

b. The amount of the patronage capital which has accrued to the member during his/her period of membership as shown on the books of the cooperative.

Section 2.11. Subscription Fees.

All subscription funds shall be deposited promptly without deduction in a special account or accounts of the cooperative as escrow or trustee for the subscriber's membership. These funds shall not be corporate funds, but shall be held solely for the benefit of the subscribers until transferred to the account of the cooperative as hereinafter provided. Such special account or accounts shall be established with a banking institution where deposits are insured by an agency of the Federal Government. Such funds shall be subject to withdrawal, or transfer to the account of the cooperative, or disbursed in a manner directed by the cooperative only upon certification by the president and secretary of the cooperative as indicated below that:

(a) The subscription agreement of a named applicant has been terminated pursuant to its terms and such withdrawal is required to repay the amount paid by him under such agreement; or

(b) A sufficient number of applicants for _____ dwelling units has not been established and such withdrawal is required

to repay established applicants the amounts paid by them; or

(c) Applicants for _____ dwelling units have signed subscription agreements, have been approved as to their eligibility by the board of directors, and have paid the subscription price in full ormade at least a downpayment on their subscription (membership) fee. If these requirements have been met and the mortgage loan has been scheduled for closing, the entire amount of the funds in the subscription escrow account may be transferred to the cooperative which shall at that time deliver membership certificates to all members.

Article III

Meetings of Members

Section 3.01. Annual Meeting.

An annual meeting of the members shall be held at _____ on the _____ of the month of _____ each year, beginning with the year 19____ at the hour of _____ o'clock, .m., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in said State, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the members as soon thereafter as convenient.

Section 3.02. Special Meetings.

Special meetings of the members may be called by the president, the board or not less than one-fourth of the members.

Section 3.03. Place of Meeting.

The board of directors may designate any place within or not more than _____ miles from _____ as the place for an annual meeting or for any special meeting called by the board.

Section 3.04. Notice of Meetings.

Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, not less than ten or more than twenty days before the date of such meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute of these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at the address as it appears on the records of the cooperative, with postage thereon prepaid.

Section 3.05. Informal Action by Members.

Any action required by law to be taken at a meeting of the members, or any action which may be taken at a meeting of the members, may be taken without a meeting upon written consent or approval of all the members, setting forth the action so taken.

Section 3.06. Quorum.

At such a meeting a quorum shall consist of 40 percent [2] of the members, or twice the number of directors, whichever is greater. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 3.07. Proxies.

(a) At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. A proxy may be cancelled by notice executed by the member with like formality and delivered to the secretary.

(b) At each meeting of the members, every member shall be entitled to vote in person or by proxy and shall be entitled to cast one vote. The votes for Directors shall be by ballot. Only the person in whose name membership is standing in the books of the cooperative on the day of such meeting shall be entitled to vote in person or by proxy. If the membership is jointly owned, co-members are limited to one-half vote each.

(c) For any person to represent a member by proxy, such person must submit a power of attorney to the secretary of the board for examination at least one hour before the time of meeting. When the secretary has certified the power of attorney is in good order, the proxy holder shall have the right to do any and all things which might be done by the member were the member present in person, which right shall include the establishment of a quorum and the organizing of any meeting.

Article IV

Board of Directors.

Section 4.01. General Powers.

The affairs of the cooperative shall be managed by its board of directors.

Section 4.01. Powers and Duties.

The board of directors shall have all the powers and duties necessary for the administration of the affairs of the cooperative and may do all such acts and things as are not by law or by these bylaws directed to be exercised and done by the members. The powers of the board of directors shall include but not be limited:

a. To accept or reject all applications for membership and admission to occupancy of a dwelling unit in the cooperative housing project, either directly or through an authorized representative;

b. To establish monthly occupancy charges, subject to approval of FmHA, as provided for in the Occupancy Agreement and based on an operating budget formally adopted by the board;

c. To engage an agent or employees, subject to the approval of FmHA, for the management of the project under such terms as the board may determine;

d. To authorize the recording of patronage capital assignments on the cooperative's books to members;

e. To terminate membership and occupancy rights for cause; and

f. To promulgate such rules and regulations pertaining to use and occupancy of the premises as may be deemed proper and are consistent with these bylaws and the Certificate of Incorporation and with any requirements of FmHA while mortgagee.

The affairs of the cooperative shall be managed by its board of directors.

Section 4.02. Number, Tenure, and Qualifications.

The number of directors shall be _____.[3] The directors elected at the annual meeting to succeed the directors named in the Articles of Incorporation shall be elected for a term of one year.

Section 4.03. Election and Term of Office.

The term of the directors named in the Certificate of Incorporation shall expire when their successors have been elected at the first annual meeting or any special meeting called for that purpose. For a board of five (5) directors, the first annual meeting of the members the term of office of two (2) directors shall be fixed for two (2) years, and the term of office of one (1) director shall be fixed at (1) year. At the expiration of the initial term of office of each respective director, his/her successor shall be elected to serve a term of office for three (3) years. The directors shall hold office until their successors have been elected and hold their first meeting. (If a larger board of directors is contemplated, the terms of office should be established in a similar manner so that they will expire in different years.) The term of any director who becomes more than 30 days delinquent in payment of his occupancy charges shall be automatically terminated and the remaining directors shall appoint his successor as provided in Section 4.11.

Section 4.04. Organization Meeting.

The first meeting of a newly elected board of directors shall be held within ten (10) days of election at such place as shall be fixed by the directors at the meeting at which such directors were elected. No notice shall be necessary to the newly elected directors in order legally to constitute such meeting, providing a majority of the whole board shall be present.

Section 4.05. Notice.

Notice of any special meeting of the board shall be given at least 2 days previously thereto by written notice delivered personally, or 4 days notice sent by mail or telegram, to each director at the director's address as shown on the records of the cooperative. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at the meeting need not be

[2] For large organizations, a smaller figure may be used if it will not result in a quorum of less than 20 members.

[3] Number of directors must be not less than 5 and must be selected by a procedure that insures that the interest of minorities and women are adequately represented.

specified in the notice or waiver of notice of such meeting, unless specifically required by law or these bylaws.

Section 4.05. Regular Meetings.

Regular meetings of the board of directors shall be held each month at such time and place within ____ miles of_____. Notice of regular meetings of the board of directors shall be given to each director, personally or by mail, telephone or telegraph, at least 5 days prior to the day named for such meeting.

Section 4.06. Special Meetings.

Special meeting of the board may be called by or at the request of the president and shall be called by the secretary at the request of any two directors. The authorized person or persons calling a special meeting of the board may fix any place within or not more than ____ miles from_____ as the place for holding such meeting.

Section 4.06. Special Meetings.

Special meeting of the board may be called by or at the request of the president and shall be called by the secretary at the request of any two directors on three days notice. Such notice shall be by mail, telephone or telegraph and shall state the time, place (as provided below) and purpose of meeting. The authorized person or persons calling a special meeting of the board may fix any place within or not more than ____ miles from _____ as the place for holding such meeting.

Section 4.07. Waiver of Notice.

Before or at any meeting of the board of directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the board shall be a waiver of notice by him/her of the time and place thereto. If all directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 4.08. Quorum.

A majority of the board shall constitute a quorum for the transaction of business at any meeting of the board; but if less than a majority of the directors is present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 4.09. Fidelity Bonds.

The board of directors shall require that all officers and employees of the cooperative handling or responsible for cooperative or trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the cooperative.

Section 4.10. Manner of Acting.

The act of a majority of the directors at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by law or by these bylaws. The board may also act by written consent of all the directors of the cooperative setting forth the action taken.

Section 4.11. Vacancies.

Any vacancy occurring on the board shall be filled by the board until the next meeting of the members and until a successor has been elected by the members to fill a vacancy. Such person shall be elected for the unexpired term of office of the predecessor in office.

Section 4.12. Directors—Removal from Office.

A director may be removed from office for violation of these bylaws or rules set forth in the Occupancy Agreement, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the director has been informed in writing of the charges preferred against the director at least 10 days before such meeting. The director involved shall be given an opportunity to be heard at such meeting. Any vacancy created by the removal of a director shall be filled by a majority vote, which may be taken at the same meeting at which such removal takes place.

Section 4.13. Compensation.

Directors shall not receive any compensation for their services as directors.

Section 4.14. Directors—Absence from Meetings.

Any director who is absent from_____consecutive meetings without excuse satisfactory to the board shall be deemed to have surrendered the office of director.

Section 4.15. Directors—Residuary Powers.

The board shall have the powers and duties necessary or appropriate for the administration of the affairs of the cooperative. All powers of the cooperative except those specifically granted or reserved to the members by law, the Articles of Incorporation, or these bylaws shall be vested in the board.

Section 4.16. Adviser to the Board.

The adviser to the board will be a member (or members) of the community who is not a member of the cooperative. In that capacity, the individual will be responsible for maintaining regular contacts with the board as well as being available to respond to special needs of the board at mutually agreeable times. The adviser will guide the board in its role of self-manager until such time as the adviser and FmHA determine that such close guidance is no longer necessary, usually not to exceed 2 years. At that time, the adviser will continue to counsel the board as appropriate. If it is apparent to the adviser, during this second phase of converting to self-management, that the cooperative is unable to assume such a responsibility, the adviser will again establish the close supervision required in the first phase of operation. The ultimate goal of the adviser and the board is to achieve self-management for the cooperative. If this goal cannot be realized within a timeframe determined during the first, or subsequent, year of operation, then the management reserve funds will be used to hire professional management, thus relieving the adviser of his/her responsibilities.

Article V

Officers

Section 5.01. Officers.

The officers of the cooperative shall be a president, a vice president, a secretary, and a treasurer. The board may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the board. The offices of secretary and treasurer may be combined and held by one person.

Section 5.02. Election and Term of Office.

(a) The officers of the cooperative specified in Section 5.01 shall be elected from the membership of the board by the board at its annual meeting or as soon thereafter as feasible. New officers may be created and filled at any meeting of the board. Each officer shall hold office until the next annual election of directors and until a successor shall have been duly elected and shall have qualified.

(b) The term of office shall be one year. Election of officers shall take place at the annual board meeting and shall be by ballot cast by qualified directors. A plurality of votes cast shall elect.

Section 5.03. Removal.

Any officer elected or appointed by the board may be removed by the board by two-thirds vote of the remaining directors FmHA whenever, in its judgment, the best interests of the cooperative would be thereby served. Such removal shall be without prejudice to the membership rights, if any, of the officer so removed.

Section 5.04. Vacancies.

A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board by majority vote for the unexpired portion of the term.

Section 5.05. President.

The president shall be the principal executive officer of the cooperative and shall in general supervise and control all the business and affairs of the cooperative. The president shall preside at all meetings of the members and of the board. The president may sign, with attestation of the secretary or any other proper officer of the cooperative authorized by the board, any deeds, mortgages, bonds, contracts, or other instruments which the board authorizes to be executed. In some cases the signing and execution thereof shall be expressly delegated by the board or these bylaws or statute to some other officers or agent of the corporation and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board from time to time.

Section 5.06. Vice President.

In the absence of the president or in the event of an inability or refusal to act, the vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice president shall perform such other duties as

from time to time may be assigned by the president of the board.

Section 5.07. Secretary.

The secretary shall keep the minutes of the meeting of the members and the board in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of and see that the seal of the cooperative is affixed to all documents, the execution of which is on behalf of the cooperative under its seal, is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member, which shall be furnished to the secretary and such other duties as from time to time may be assigned by the president of the board.

Section 5.08. Treasurer.

The treasurer shall have charge and custody of and be responsible for all funds and securities of the cooperative; receive and give receipts for moneys due and payable to the cooperative, from any source whatsoever, deposit all such money in the name of the cooperative in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VIII of these bylaws; and in general perform all duties incident to the office of treasurer and such other duties as from time to time be assigned by the president of the board.

Article VI

Order of Business

Section 6.01. Order of Business.

The order of business at any regular or special meeting of the members of the board shall be:

(a) Reading and approving of any unapproved minutes.
(b) Reports of officers and committees.
(c) Unfinished business.
(d) New business.
(e) Adjournment.

Section 6.01. Order of Business.

The order of business at any regular or special meeting of the members or the board shall be:

a. Roll Call.
b. Proof of notice of meeting or waiver of notice.
c. Reading and approving of any unapproved minutes.
d. Reports of officers and committees.
e. Election of inspectors of election (when applicable)
f. Election of directors (when applicable).
g. Unfinished business.
h. New business.
i. Adjournment.

If present, a representative of FmHA will be given an opportunity to address any regular or special meeting.

Section 6.02. Parliamentary Procedure.

On questions of parliamentary procedure not covered in these bylaws, a ruling by the president shall prevail.

Article VII

Committees

Section 7.01. Committees of Directors.

The board of directors, by resolution adopted by majority of the directors in office, may designate one or more committees, each of which shall consist of one or more directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the board in the management of the cooperative; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board, or any individual director, of any responsibility imposed upon the board or any individual director by law.

Section 7.02. Membership Committees.

Other committees not having and exercising the authority of the board in the management of the cooperative will be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. At the first membership meeting the members will be solicited by the president to obtain voluntary commitments to serve on the various committees. As many members as possible should be encouraged to become involved in committee responsibilities. Any member may be removed from a committee by the president whenever in his/her judgment the best interest of the cooperative shall be served by such removal.

Section 7.03. Term of Office.

Each member of membership committees shall continue as such until the next annual meeting of the members of the cooperative when members may change from one committee to another. Additional members may join a committee at any time during the year.

Section 7.04. Chairperson.

One member of each membership committee shall serve as chairperson by decision of the members of the committee. The chairperson will report committee activities and receive direction from a designated member of the board.

Section 7.05. Vacancies.

Vacancies in the membership of any membership committee may be filled in the same manner as provided in the case of the original members.

Section 7.06. Quorum.

Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole membership committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7.07. Rules.

Each membership committee may adopt rules for its own government not inconsistent with these bylaws or with rules adopted by the board of directors.

Article VIII

Contracts, Checks, Deposits, and Funds

Section 8.01. Deposits.

All funds of the cooperative shall be deposited from time to time to the credit of the cooperative in such Federally insured banks, trust companies, or other Federally insured depositories as board may select.

Section 8.02. Gifts.

The board may accept on behalf of the cooperative any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the cooperative.

Article IX

Certificates of Membership

Section 9.01. Certificates of Membership.

The board may provide for the issuance, and determine the form of, certificates evidencing membership in the cooperative. Such certificates shall state that the cooperative is organized under the laws of the State of _____, shall be signed by the president and the secretary, sealed with the seal of the cooperative, and consecutively numbered. The name and address of each member and the date of issuance of the certificate will be maintained by the cooperative. If a certificate becomes lost, mutilated, or destroyed, a new certificate may be issued upon such terms and conditions as the board may determine.

Section 9.01. Issuance of Certificates.

When a person has been elected to membership and has paid any dues that may then be required, a certificate of membership shall be issued in his/her name and delivered to the member by the secretary.

Article X

Section 10.01. Books and Accounts.

The Treasurer of the cooperative shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, the board, and committees having any of the authority of the board of directors, and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and records of the cooperative may be inspected by any member, or member's agent or attorney, or FmHA for any proper purposes at any reasonable time.

Section 10.02. Auditing.

At the close of each fiscal year, the books and records of the cooperative shall be audited by a Certified Public Accountant or other person acceptable to FmHA whose report will be prepared and certified in accordance with the requirements of FmHA. Based on such reports, the cooperative will furnish its members with an annual financial statement including the income and disbursements of the cooperative. The cooperative will also supply the members, as soon as practicable after the end of each calendar year, with a statement showing the amount assigned to each member's patronage capital account.

Article XI

Fiscal Year

The fiscal year of the cooperative shall begin on the first day of January and end on the last day of December in each year, except that the first fiscal year of the cooperative shall begin at the date of incorporation.

Article XII

Seal

The board shall provide a cooperative seal, which shall be in the form of a circle and shall have inscribed thereon the name of the cooperative and the words "Cooperative Seal." The seal will be kept by the secretary.

Article XIII

Waiver of Notice

Whenever any notice is required to be given under the provisions of the statutes of said State or the Articles of Incorporation or the Bylaws of the cooperative, a waiver thereof in writing signed by the person or persons entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XIV

Repeal of Amendment of Bylaws

Section 14.01. Repeal of Amendment of Bylaws.

These bylaws may be repealed or amended by a majority vote of the members present at any annual meeting of the members, or at any special meeting of the members called for such purpose, at which a quorum is present provided that while FmHA is mortgagee no amendment will become effective until it has received the FmHA written approval of FmHA and provided no such action shall change the purposes of the cooperative so as to impair its rights and powers under the laws of said State, or to waive any requirements of bond or any provision for the safety and security of the property and funds of the cooperative or its members, or to deprive any member without an express assent of rights, privileges or immunities then existing. Notice of any amendment to be offered at any meeting shall accompany the notice of any regular or special meeting at which proposed amendment is to be voted upon.

Exhibit E—Qualifications of an Adviser to the Board

Qualifications of an Adviser to the Board

In the Board's analysis of the talents and abilities of a person to handle the job of adviser, the first attribute most desirable is the capacity to be a *friend*. The definitions of a friend include (1) a person whom one knows, likes, and trusts; (2) one with whom one is allied in a struggle or cause; (3) one who supports, sympathizes with, or patronizes a group, cause, or movement.

The adviser must care about the person he or she is trying to help. That means having patience and understanding during the trial and error period of a new cooperative's operation and also when it becomes necessary to explain complicated regulations or legal documents more than just once to those who have had less educational opportunities than the adviser.

The adviser must teach a totally new housing concept to persons who have only had experience with a rental environment. This means that the adviser must be able to talk to each and every person who is interested in the cooperative housing and explain just what the person is facing. The adviser must also be able to listen to those who rely on someone's "being there" to hear their problems and ideas. The adviser must be someone who is able to work with low-income and minority persons and one who both understands their particular circumstances and strives to improve their well-being. The adviser, in this regard, must be able to learn as well as to teach.

The adviser must be dedicated to those persons with whom he or she is associated as well as to have the capacity to work with city officials, Government officials, politicians, and other professionals to achieve the goal of housing the local citizens.

I. Educational Background

a. Experience in working with—

Minority and low-income people and with the problems inherent within this group.

b. Administrative background for—

1. setting up system for management, including detailed financial, personal, and activity records;

2. setting up system for maintenance for buildings, grounds, and equipment.

c. Training to—

1. accept the major responsibility of teaching and have the experience to carry this out.

2. make certain that members are learning while doing, whatever the activity.

3. know how to use group dynamics.

4. be ready to assist individual members resolve problems.

5. recognize a need for social casework when required, then be able to give or obtain that assistance. (Individual problems quickly affect cooperatives.)

6. have knowledge of and make effective use of resources.

7. handle the business of a cooperative while teaching members how to manage it themselves.

8. understand complexity of management and maintenance.

9. be able to understand, interpret, and teach the contents of documents from funding agencies.

Ideally, a background in social work would be the most logical experience, but others can be considered.

Exhibit E-1—Relationship of Adviser to Members

Relationship of Adviser to Members

I. The adviser must be able to teach the members and the members must be willing to learn management and maintenance of total Cooperative while they gradually assume more and more responsibilities, until the cooperative is completely self-managed.

II. In order to be effective, the adviser should have the ability to teach to members:

a. The complete procedures and techniques of management and maintenance.

b. A cooperative approach to everything involved while member lives in a cooperative.

c. An ability to deal with persons in authority.

d. Resources and how to use them.

e. Board procedures and specific duties.

f. Functions and responsibilities of Committees.

g. Regulatory documents and their importance.

h. Attitudes and procedures that will help member to:

1. learn while doing.

2. make payments on time.

3. develop a willingness to do his or her fair share of the work and the decisions-making.

4. cultivate a concern for his or her neighbor.

5. consider the good of the group, ahead of self-interest.

6. use his or her vote and know it counts: within the cooperative for directors and officers of the board; outside for local, state, and national Government.

7. cooperate with board and committees.

III. The adviser must be able to help the people understand that there are rules which must be followed. The adviser must make certain that the members realize that, by signing their occupancy agreement, they are agreeing to live up to all aspects of that agreement. In so doing, they are agreeing to abide by all of the funding agency's regulations pertaining to the cooperative. These regulatory documents must be taught over and over and consulted by the members in all major decisions. The adviser would also be expected to:

a. work with families or individuals with specific problems.

b. consider each activity as an opportunity for the members to learn—learning while doing must be the members' primary goal.

c. become involved in the early planning stage of the cooperative.

d. involve members in decision-making during the planning stage, including the selection of living unit.

e. feel a part of the group of members and break down regulations and instructions into language understood by them.

f. give members the freedom and encouragement to express ideas and to carry out ideas accepted by the majority unless they are contrary to Government regulations.

g. interpret Government regulations and guidelines, being able to apply and teach them.

Exhibit F—Adviser Responsibilities

Adviser Responsibilities

I. Responsibilities of the adviser to the board will include—

a. serving as backup manager while teaching self-management and maintenance to the members.

b. assisting in organizing the board of directors and standing committees and meeting regularly with them.

c. assisting in continual evaluation and monitoring of operations.

d. developing an educational plan and being responsible for its implementation.

e. assisting in setting up systems and procedures for—

1. management, including detailed financial, personal, and activity records;

2. maintenance of buildings, grounds, and equipment.

f. assisting with financial questions that are not of sufficient complexity to require referral to an outside auditor.

g. advising in evaluation of new applicants for membership.

Exhibit G—Limited Equity Agreement

Limited Equity Agreement

This Agreement, dated _____, by and between _____ (hereinafter referred to as the "Cooperative"), a corporation having its principal office and place of business at _____ and Farmers Home Administration, United States Department of Agriculture (hereinafter referred to as FmHA).

Witnesseth Whereas.

The purpose of the cooperative is to own and operate cooperative housing on behalf of its members, and the cooperative has applied to FmHA for mortgage financing as authorized under Section 515 of the Housing Act of 1949, as amended.

The purpose of FmHA is to provide long term housing financing for very-low, low-, and moderate-income persons and households, although initially eligible cooperative members may remain in occupancy after exceeding the income limit established for moderate income.

The additional purpose of FmHA is to maintain the availability of units financed by FmHA for very-low, low-, and moderate-income persons for as long as possible up to the 50-year maximum life of the loan.

As a means for implementing and carrying out these purposes, the cooperative pledges to FmHA that:

(a) Equity accumulated by the cooperative, other than through the appreciation in value of real estate, furnishings, and equipment of the cooperative, will be assigned on the cooperative's books equally to members at the end of its fiscal year and in accordance with the IRS ruling concerning patronage capital.

(b) The members will be notified, in writing, of the amount assigned to his or her patronage account each year after the assignment has been made.

(c) The officers, board of directors, and members of the cooperative may not act to dissolve the cooperative for the purpose of distributing equity, or for other reasons, except as necessary due to default or other circumstances beyond the cooperative's control, and

(d) Should it become necessary to dissolve the cooperative, all property and assets of the cooperative will be transferred to another nonprofit or such other municipal organization and be maintained for the same purposes for which it was started.

(e) Only membership fees and money accrued in the members' patronage capital accounts will be distributed to the members and represents the entire equity payment to which the members are entitled. The cooperative reserves the right to withdraw from the equity payment or membership fee any amount due the cooperative through member's delinquency in payment of occupancy charge or through damage to the premises.

In witness thereof, the parties hereto have caused this agreement to be signed and sealed the day and year first above written.

(Witness)
(Cooperative) _____
BY:_____(Seal)
(Member)

This agreement will be filed with the member's record.

Exhibit H—Subscription Agreement

Subscription Agreement

Dwelling Unit No. _____
Date _____

1. Subscription Amount:

(1) I/We_____, a legal resident(s) of_____, hereinafter called "Subscriber," hereby subscribe for membership in _____, a cooperative housing corporation hereinafter called the "Cooperative," and hereby subscribe to a Membership Certificate in said Cooperative having a par value of_____.

(b) Subscriber hereby agrees to pay for the Membership Certificate, also referred to as Membership Fee, as follows:

(1) $_____ upon signing this Agreement.

(2) $_____ in monthly payments of $_____ payable over ____ consecutive months (not to exceed 12 months).

2. Ratification of Other Provisions. Subscriber has read and agrees to be bound by all provisions of the articles of incorporation, bylaws, and occupancy agreement, copies of which are attached hereto and receipt of which is hereby acknowledged, and agrees to be bound by requirements of the Farmers Home Administration (FmHA) as long as it remains mortgagee.

3. Priority of Mortgage Lien. This agreement and all rights hereunder are and at all times shall be subject and subordinate to the lien of the mortgage and accompanying documents to be executed by the Cooperative to FmHA and to any and all modifications, extensions, and renewals thereof; and to any mortgage or deed of trust which may at any time hereafter be placed on the property of the Cooperative or any part thereof.

4. Occupancy Agreement. Subscriber, if approved for membership, will be entitled to occupancy of the above numbered dwelling unit under provisions of the above-mentioned occupancy agreement. Estimated initial charge per month for said unit will be established prior to signing the occupancy agreement. Future charges will be based on family income, as provided for in the occupancy agreement. I/We agree to execute the occupancy agreement on demand and to comply with all the terms thereof.

5. Cancellation Rights.

(a) The Cooperative reserves the right at any time before it has notified the Subscriber of his/her acceptability for membership, for reasons deemed sufficient by the Cooperative, and approved by FmHA, to return the amount paid by the Subscriber under this Agreement. In the event the Subscriber shall have died prior to becoming a member, the Cooperative reserves the right to return the amount paid by the Subscriber under this Agreement to Subscriber's estate or legal representative, and thereupon all rights of the Subscriber shall cease and terminate without further liability on the part of the Cooperative.

(b) It is understood that the Subscriber's credit is subject to approval by FmHA, and that said Subscriber's total household income must not exceed any limitations for initial occupancy established by FmHA. In the event FmHA determines that the Subscriber does not meet FmHA credit, income limitation, or other eligibility requirements for participation in this project, the Cooperative shall return to Subscriber the sums paid hereunder. In the event FmHA determines that the necessary loan to finance the Cooperative housing project cannot be made or insured by FmHA, or the Cooperative withdraws its application for such loan, the Cooperative shall return to Subscriber all sums paid by Subscriber hereunder. Upon either determination by FmHA and the return of the sums to Subscriber as provided in this paragraph (b), this agreement shall become null and void and all rights and liabilities hereunder of the parties shall cease and terminate.

(c) If the Subscriber within five (5) days after the execution of this subscription agreement, notifies the Cooperative in writing that he wishes to withdraw from the agreement, the amounts paid by the Subscriber under this agreement will be returned to the Subscriber and thereupon all rights and liabilities of the Subscriber hereunder shall cease and terminate. If, at the end of the five-day period, the Subscriber has not exercised this right to withdraw, the right will be terminated. If FmHA determines that membership has not been achieved to the extent required by FmHA, the Subscriber will again have the right to withdraw within a five-day period.

(d) If the Subscriber defaults in any obligation under this Agreement, and such default continues for fifteen (15) days after notice sent by registered mail by the Cooperative to the Subscriber at the address given below, then at the option of the Cooperative, the Subscriber shall lose any and all rights under this agreement. Any amount paid toward this subscription price at the option of the Cooperative may be retained by the Cooperative as liquidated damages or be returned, less the Subscriber's proportionate share of expenses incurred by the Cooperative as determined solely by the Cooperative. The Cooperative may, at its option, release the obligations of the Subscriber under this agreement in the event the Subscriber secures an assignee of this agreement who assumes the obligations herein contained and is satisfactory to the Cooperative and FmHA while mortgagee. This Agreement is not otherwise assignable.

6. Oral Representation Not to be Relied Upon. This agreement will supersede any prior understandings and agreements and constitutes the entire agreement between the Subscriber and the Cooperative, and no oral

representation or statements shall be considered a part hereof.

*Witness:*_____

_____

_____

Subscriber

_____

Subscriber

_____

Address

_____

_____

Telephone

Exhibit I—Occupancy Agreement

Occupancy Agreement

This agreement, dated_____, by and between

_____

(hereinafter referred to as the "Cooperative"), at_____

and_____

(hereinafter referred to as "Member").

Witnesseth: Whereas:

The purpose of the Cooperative is to acquire, own, and operate a cooperative housing project and its members shall have the right to occupy its dwelling units under the terms and conditions set forth in this agreement:

Member is the owner and holder of a certificate of membership of the Cooperative and intends to occupy a dwelling unit in the project as permanent residence; and

Member has certified to the accuracy of the statements in Member's application and agrees and understands that household income and other eligibility requirements are substantial and material requirements of his initial and continuing occupancy.

TO HAVE AND TO HOLD dwelling unit Number_____ on the terms and conditions set forth in this agreement, in the corporate charter, bylaws, and any other rules and regulations of the Cooperative. The term of this agreement shall be for a three-year period ending on_____, 19_____,[1] renewable for successive three-year periods under the conditions provided for in this Agreement.

Article 1. Occupancy Charges

Section 1.01. Commencing at the time indicated in Article 2, the Member agrees to pay to the Cooperative a monthly sum referred to as the "Occupancy Charge." This amount will be equal to one-twelfth of the Member's proportionate share of the total amount required by the Cooperative, as estimated by its board of directors, to meet its annual expenses and the requirements of the FmHA loan. These include but are not limited to, the following items:

(a) Project operating expenses and cost of services furnished.

(b) Necessary management reserve and administrative costs.

(c) Taxes and assessments levied against the project or the Cooperative which it is required to pay.

(d) Fire and extended coverage insurance on the project and any other insurance which the Cooperative may require.

(e) The cost of furnishing any water, electricity, heat, gas, garbage and trash collection, and other utilities, if furnished by the Cooperative.

(f) Payments to other reserves set up by the board of directors.

(g) Estimated costs of repairs, maintenance, and replacements of project property to be made by the Cooperative.

(h) The amount of principal, interest, and any other required payments on any indebtedness of the Cooperative, including any loan made or insured by the Farmers Home Administration (FmHA), United States Department of Agriculture.

(i) Any other expenses of the Cooperative approved by the board of directors and by FmHA, while mortgagee, including operating deficiencies, if any, for prior periods.

Section 1.02. The board of directors shall determine the amount of the occupancy charges annually, but may do so at more frequent intervals should circumstances so require. No Member shall be charged with more than the appropriate share determined by the board of directors. That amount of the occupancy charge required for payment on the principal of mortgage of the Cooperative or any other capital expenditures shall be credited upon the books of the Cooperative as a capital contribution by the Members. Until further notice from the Cooperative, the monthly charge for the above-mentioned dwelling unit shall be $_____.

Article 2. When Payment of Occupancy Charges to Commence

Section 2.01. After thirty days' notice by the Cooperative that the dwelling unit is available for occupancy, or upon acceptance of occupancy, whichever is earlier, the Member shall make a payment for occupancy charge covering the unexpired balance of the month. Thereafter, the Member shall pay occupancy charge in advance on the first day of each month. Dates of payments may be changed by mutual agreement of the Cooperative and FmHA.

Section 2.02. The Member agrees to furnish to the Cooperative, each year, a certificate of income on which the Member's occupancy charge will be determined.

Article 3. Patronage Refunds

Section 3.01. The Board shall, on the books of the Cooperative, assign to the Member in accordance with the IRS ruling concerning patronage capital, a proportionate share of money collected in excess of the amount needed for Cooperative expenses, including reserves designated as management reserve, and Members will be notified of the amount assigned each year.

Article 4. Member's Option to Renew

Section 4.01. It is agreed that the term of occupancy shall be renewed for further periods of three years from the expiration of the initial term. Such renewals shall be based upon the same agreements as contained in this agreement unless: (1) notice of the Member's decision not to renew is given to the Cooperative in writing at least 4 months prior to expiration of the current terms, and (2) Member, before expiration of said term, shall (a) endorse membership certificate for transfer to Cooperative and deposits same with the Cooperative, (b) meet all obligations and pay all amounts due under this Agreement before said expiration, and (c) vacate and leave the premises in good state of repair. Upon compliance with foregoing provisions (1) and (2), the Member shall have no further liability under this agreement. If extenuating circumstances warrant, the Member's four-month notification of intention to vacate may be modified appropriately. The Member will be entitled to the patronage capital which has accrued and been assigned during the term of this agreement provided that provisions (1) and (2) have been met.

Article 5. Premises to be Used for Residential Purposes Only

Section 5.01. The Member shall occupy the dwelling unit covered by this agreement as a private dwelling unit for the Member and/or immediate household and for no other purpose. The Member shall have use of all common community property and facilities of the project so long as the Member continues to own a membership certificate of the Cooperative, occupies the assigned dwelling unit, and abides by the terms of this Agreement. Any sublessee of the Member, if approved pursuant to Article 7 hereof, may enjoy the rights to which the Member is entitled under this Article 5, except that the sublessee will have no voting rights in the affairs of the Cooperative.

Section 5.02. Member shall not permit or suffer anything to be done or be kept upon said premises which will increase the rate of insurance on the building, or on its contents. Member will not obstruct or interfere with the rights of other occupants, or annoy them by unreasonable noises or otherwise permit any nuisance on the premises, or allow any illegal act to be committed. Member shall comply with all the requirements of the Board of Health and of all other governmental authorities with respect to the said premises. If, by reason of the occupancy or use of these premises by Member, the rate of insurance on the building is increased, Member shall become personally liable for the additional insurance premiums.

Article 6. Member's Right to Peaceable Possession

Section 6.01. In return for Member's continued fulfillment of the terms and conditions of this agreement, the Cooperative agrees that the Member may at all times while this agreement remains in effect, have and enjoy for the Member's sole use and benefit the dwelling unit and community facilities hereinabove described.

Article 7. No Subletting without Consent of Corporation

Section 7.01. This agreement shall not be assigned nor Member's dwelling unit sublet without the written consent of the Cooperative and FmHA, while mortgagee. Liability of Member under this agreement shall be responsible for the conduct of the

[1] The termination date to be inserted should be three years from the date of the occupancy agreement.

sublessee. Any unauthorized subleasing shall, at the option of the Cooperative and of FmHA, while mortgagee, result in termination and forfeiture of Member's rights under this occupancy agreement.

Article 8. Transfers

Section 8.01. Neither this agreement nor Member's right of occupancy shall be transferrable or assignable except as provided in the bylaws of the Cooperative for the transfer of membership.

Article 9. Management, Taxes and Insurance

Section 9.01. The Cooperative shall provide necessary management, operation, and administration of the project; pay or provide for the payment of all taxes or assessments levied against the project; procure and pay or provide for the payment of fire insurance and extended coverage, and other insurance as the Cooperative may deem advisable on property in the project. *The Cooperative will not, however, provide insurance on Member's personal property.*

Article 10. Utilities

Section 10.01. The Cooperative shall arrange for utilities (water, electricity, heat, and gas) for common areas of the structure(s) in amounts which it deems reasonable and in conformance with Exhibit A–6 to Subpart E of Part 1944, "Allowances for Utilities and Other Public Services." (Strike out any of the foregoing items in this Article which are not applicable.) Each unit will be separately metered and Member shall pay directly to the supplier for the utilities billed to Member.

Article 11. Repairs

Section 11.01. By Member. Member agrees to repair and maintain Member's dwelling unit at own expense as follows:

(a) Any repairs or maintenance necessitated by Member's own negligence or misuse;

(b) Any redecoration of own dwelling unit authorized, done or contracted for by Member;

(c) Any repairs, maintenance, or replacements required on the following items: (Insert the items desired, subject to FmHA approval.)

Section 11.02. By Cooperative. The Cooperative shall provide and pay for all necessary repairs, maintenance, and replacements except as specified in Section 11.01. Member agrees to the right of the officers of the Cooperative to authorize entrance to Member's dwelling unit in order to complete necessary repairs, maintenance, and replacements and to authorize entrance for such purposes by employees of any contractor, utility company, municipal agency, or others at any reasonable hour of the day and upon reasonable notice. In the event of emergency, the unit may be entered at any time. Notification of entry will be left for the member by the person performing the maintenance or repair.

Section 11.03. Right of Cooperative to Make Repairs at Member's Expense. In case Member shall fail to effect and pay for the repairs, maintenance, or replacements specified in Section 11.01, in a manner satisfactory to the Cooperative, the board may do so and add the cost of repairs to Member's next month's occupancy charge payment.

Article 12. Alterations and Additions

Section 12.01. The Member shall not, without the written consent of the Cooperative make any structural alterations in the premises or in the water, gas or steampipes, electrical conduits, plumbing or other fixtures connected therewith, or remove any additions, improvements, or fixtures from the premises.

Section 12.02. If Member for any reason ceases to be an occupant of the premises, Member shall surrender to the Cooperative possession thereof, including any alterations, additions, fixtures, and improvements.

Section 12.03. Member shall not, without the prior written consent of the Cooperative install or use in dwelling unit any air conditioning equipment, electric heater, or power tools. Member agrees that the Cooperative or FmHA, while mortgagee, may require the prompt removal of any such equipment at any time, and that failure to remove such equipment upon request shall constitute a default within the meaning of Article 13 of this agreement.

Article 13. Definition of Default by Member and Effect Thereof

Section 13.01. If, at any time after the happening of any event specified in clauses numbered (a) through (k), below, the Cooperative gives to Member a 30-day notice of expiration, this agreement and all Member's rights under this agreement will expire on the date specified in such notice. In the meantime the default may be cured in a manner deemed satisfactory by the Cooperative. After 10 days following such expiration of Member's rights, the Cooperative may reenter the dwelling unit and remove all persons and personal property therefrom, by any means available to it by law, and may repossess the dwelling unit in its former state as if this agreement had not been made.

(a) If, during the term of this agreement, Member ceases to be the owner and legal holder of a membership of the Cooperative.

(b) If Member attempts to transfer or assign this agreement in a manner inconsistent with the provisions of the bylaws.

(c) If, during continuance of this agreement, Member is declared bankrupt under the laws of the United States so as to be released from any debt or obligation to the Cooperative or to interfere with his full exercise of his rights as Member and occupant.

(d) If, during continuance of this agreement, a receiver of Member's property is appointed under the laws of the United States or of any State.

(e) If, during continuance of this agreement, Member shall make a general assignment for the benefit of creditors.

(f) If, during continuance of this agreement, any of the membership rights in the Cooperative owned by Member are duly levied upon and sold under the process of any court.

(g) If Member fails to effect and/or pay for repairs and maintenance as provided for in Article 11.

(h) If Member fails to pay any sum due pursuant to Article 1.

(i) If default occurs with respect to any obligation of Member under this agreement.

(j) If, during the term of this agreement, Member fails to comply promptly with all requests by the Cooperative for information and certifications concerning the total current income of Member and Member's household or any other eligibility requirements for membership or occupancy.

(k) If, during the term of this agreement, limitations for continued occupancy are established from time to time by the FmHA and are exceeded.

Section 13.02. Member hereby expressly waives any and all right to reenter the dwelling if the eviction is by judgment of any court or judge. The words "enter," "reenter," or "reentry" as used in this agreement are not restricted to their technical legal meaning. In the event of a breach or threatened breach by Member of the terms of this agreement, the Cooperative shall have the right of injunction and the right to invoke any remedy allowed at law or in equity, as if reentry, summary proceedings, and other remedies were not provided for.

Section 13.03. Failure by the Cooperative to avail itself of any remedy given under this agreement shall not waive or destroy any right of the Cooperative to avail itself of remedies for any similar or other breach or default by Member.

Section 13.04. Notice by the Cooperative under any of the conditions described in Section 13 shall be in writing and shall contain the following: "You have a right to appeal this action in accordance with Subpart L of Part 1944, 'Tenant Grievance and Appeal Procedures'." The cooperative shall not evict any member except by judicial action pursuant to State or local law and in accordance with the requirements of Subpart L of Part 1944. The Cooperative will notify the Member in the manner subscribed in said Subpart L of Part 1944.

Article 14. Member to Comply With All Corporate Regulations

Section 14.01. Member agrees to preserve and promote the cooperative ownership principles on which the Cooperative has been founded and to abide by the charter, bylaws, rules and regulations of the Cooperative, and amendments. The Member agrees to make diligent effort in performing duties and accepting responsibilities either through volunteering or by assignment from the board of directors. By acts of cooperation with other members, Member will strive to bring about and maintain a high standard in home and community conditions. The Cooperative agrees to deliver to Member its rules and regulations and/or to distribute them in such other manner as to constitute adequate notice.

Article 15. Effect of Fire Loss on Interests of Member

Section 15.01. In the event of loss or damage by fire or other casualty to Member's dwelling unit without fault or negligence of Member, the Cooperative shall determine (1) whether to restore the damaged premises and, if not to restore (2) the amount to be paid to Member to redeem membership and

for reimbursement for any loss sustained by the Member.

Section 15.02. If, under such circumstances, the Cooperative decides to restore the premises, occupancy charges shall stop wholly or partially, as determined by the Cooperative, until the premises have been restored. If, on the other hand, the cooperative decides not to restore the premises, the occupancy charges shall cease from the date of such loss or damage.

Article 16. Inspection of Dwelling Unit

Section 16.01. Member agrees that the representatives of any mortgagee holding a mortgage on the property of the Cooperative, the officers of the Cooperative, or authorized representative of the Cooperative shall have the right to enter the dwelling unit of Member and make inspections and, with the approval of the Cooperative, the employees of any contractor, utility company, municipal agency, or others shall have the right to enter the dwelling unit of Member and make inspections at any reasonable hour of the day, upon reasonable notice, and at any time in the event of emergency.

Article 17. Subordination Clause

Section 17.01. The Cooperative housing project of which Member's dwelling unit is a part is planned to be constructed by the Cooperative with the assistance of a loan to the Cooperative made or insured by the FmHA. Therefore, this agreement and all rights, privileges, and benefits hereunder shall be at all times subject and subordinate to a first mortgage lien or any documents executed by the Cooperative to secure its obligations to FmHA and to any extensions and removals and to any security instrument which may be made in replacement thereof or at any time hereafter be placed on the property of the corporation. Member hereby agrees to execute, at the Cooperative's request and expense, any instrument which the Cooperative or any lender or mortgagee may deem necessary or desirable to subordinate this Agreement to any such security instrument. Member hereby appoints the Cooperative and each and every officer thereof, and any future officer, as irrevocable attorney-in-fact during the term of the agreement to execute any such instrument on behalf of Member.

Article 18. Late Charges and Other Costs in Case of Default

Section 18.01. In addition to all other sums due or to become due under this agreement, Member shall pay to the Cooperative a late charge, in an amount to be determined by the board of directors, at any time payment of occupancy charges, or part thereof, is more than 10 days late.

Section 18.02. If, because of default by Member under any obligation in this agreement, the Cooperative obtains the services of an attorney, Member shall pay to the Cooperative all costs and fees involved, including reasonable attorney's fees and the costs of any resulting law suit, if such an action becomes necessary.

Article 19. Notices

Section 19.01. Whenever any bylaw of Cooperative, any law, or this agreement requires notice to be given to either party, any notice or demand by the Cooperative to Member shall be considered to have been duly given if the same is delivered to Member at Member's unit or to Member's last known address. Any notice or demand by Member to the Cooperative shall be considered to have been duly given if delivered to an officer of the Cooperative. Such notice may also be given by depositing same in the United States mails addressed to Member as shown on the books of the Cooperative, or to the president of the cooperative, as the case may be, and the time of mailing shall be the time of giving such notice.

Article 20. Oral Representation Not Binding

Section 20.01. No representation other than those contained in this Agreement and in the charter and the bylaws of the Cooperative shall be binding upon the Cooperative.

In witness whereof, the parties hereto have caused this agreement to be signed and sealed the day and year first above written.

_____

Cooperative

By: _____

(SEAL)

_____

Member

TO BE DULY ACKNOWLEDGED

Subpart L—Farmers Home Administration Grievance and Appeals Procedure

31. Section 1944.551 is revised to read as follows:

§ 1944.551 Purpose.

The purpose of this subpart is to set forth uniform requirements for grievance and appeals procedures in all Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) projects financed by the Farmers Home Administration (FmHA) under sections 514, 515, and 516 of the Housing Act of 1949. The objective of this subpart is to ensure the fair treatment of persons residing in multiple family projects while providing for an equitable manner by which borrowers can operate, maintain, and safeguard housing projects. The right to appeal under this subpart will also extend to persons who seek admission to the projects.

32. Section 1944.552 is amended by redesignating paragraphs (c) through (h) as (d) through (i), by revising redesignated paragraph (h) and by adding a new paragraph (c) to read as follows:

§ 1944.552 Definitions.

* * * * *

(c) *Consumer cooperative.* A corporation which (1) is organized under the cooperative laws of a State or Federally recognized Indian tribe; (2) will own and operate the housing on a cooperative basis solely for the benefit of the members; (3) will operate at cost and, for this purpose, any patronage refunds accruing to members in accordance with § 1944.215(i) of this subpart will not be considered gains or profits; and (4) will restrict membership in the housing to eligible persons and, to any extent the cooperative and FmHA permit, to others in special circumstances.

* * * * *

(h) *Tenant.* An eligible lessee/occupant of a RRH or LH project who has executed a lease agreement. For the purposes of this subpart, the term "tenant" will also mean "cooperative member."

* * * * *

PART 1951—SERVICING AND COLLECTIONS

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

33. The authority citation for Part 1951 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

49. Section 1951.506 is amended by revising paragraph (a)(1) to read as follows:

§ 1951.506 Processing payments.

(a) * * *

(1) All payments will be based on tenants occupying the units as of the first day of the month for which the payment statement is generated. For the purposes of this subpart the word "tenant" also means RCH "member."

* * * * *

50. Section 1951.510 is amended by revising paragraph (c)(2)(iv) to read as follows:

§ 1951.510 Payment application.

(c) * * *

(2) * * *

(iv) Except for cooperative housing, project late fees may not be paid from project income as specified in paragraph XIII B 2 a (4) of Exhibit B to Subpart C of Part 1930 of this chapter.

* * * * *

PART 1965—REAL PROPERTY

Subpart B—Security Servicing for Multiple Housing Loans

36. The authority citation for Part 1965 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

37. Section 1965.65 is amended by revising paragraph (a)(3) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

(a) * * *

(3) Proposed transfers must not be to the detriment of the FmHA or the tenant. LH loans will only be transferred under this subpart when they will continue to be used to provide housing for farm laborers as defined in Subpart D of Part 1944 of this chapter. Cooperative loans will only be transferred when they will be used for the purpose of providing low income rental housing.

* * * * *

Dated: March 27, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-11759 Filed 5-17-89; 8:45 am]

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federal register

Thursday
May 18, 1989

Part III

Department of Transportation

Coast Guard

33 CFR Parts 140, 143, and 146
Emergency Evacuation Plans for Manned OCS Facilities; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 140, 143, and 146

[CGD 84-098b]

RIN 2115-AC41

Emergency Evacuation Plans for Manned OCS Facilities

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing regulations which will require a comprehensive, site specific contingency plan for the emergency evacuation of all personnel from manned fixed facilities and mobile offshore drilling units (MODU's) on the Outer Continental Shelf (OCS). This final rule also establishes specific standards for standby vessels if they are designated in the emergency evacuation plan (EEP) as an integral part of the evacuation procedures. This rulemaking is a culmination of Coast Guard initiatives to require contingency planning for evacuation of OCS personnel under emergency conditions. This rule is also in response to legislative mandates concerning OCS evacuation procedures.

EFFECTIVE DATE: This regulation is effective on June 19, 1989, except for the information collection requirements in §§ 146.140 and 146.210, which will become effective on a date to be published in the **Federal Register**. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 19, 1989.

FOR FURTHER INFORMATION CONTACT: LCDR Anthony Dupree, Jr., Merchant Vessel Inspection and Documentation Division, (202) 267-2307.

SUPPLEMENTARY INFORMATION: On March 7, 1985, the Coast Guard published an Advanced Notice of Proposed Rulemaking (ANPRM) (50 FR 9290) entitled "Revision of the Regulations on Outer Continental Shelf Activities" (CGD 84-098). One of the several subjects discussed in the ANPRM concerned the safe evacuation of personnel from manned OCS facilities under emergency conditions. On December 24, 1987, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) (52 FR 48717) entitled "Emergency Evacuation Plans for Manned OCS Facilities" (CGD 84-098b). The NPRM proposed regulations that would require a comprehensive, site specific contingency plan for the emergency evacuation of all personnel from manned OCS facilities. The NPRM did not propose the mandatory use of standby vessels but did propose specific standards for standby vessels if they were designated in the Emergency Evacuation Plan (EEP) as an integral part of the plan.

The comment period for the NPRM originally closed on January 25, 1988, but was extended until February 25, 1988, in response to public requests (53 FR 2236; January 27, 1988). Forty two comment letters were received. A public hearing was not requested.

On March 29, 1988, the Subcommittee on the Panama Canal and Outer Continental Shelf of the U.S. House of Representatives' Committee on Merchant Marine and Fisheries held a public hearing in Washington DC to discuss the EEP NPRM. A copy of the transcript of this hearing has been placed in the regulatory docket at the Office of the Marine Safety Council, U.S. Coast Guard, Room 3600, 2100 Second Street SW., Washington, DC 20593-0001.

Drafting Information

The principal persons involved in drafting this final rule were LCDR Anthony Dupree, Jr., Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background and Objectives

The principal objective of this final rule is to ensure that Outer Continental Shelf (OCS) facility and emergency assistance personnel are provided with the direction and equipment necessary for a timely and safe evacuation of an OCS facility in an emergency. The final rule establishes a performance standard which requires operators (i.e. leaseholders or other entities managing the leasehold) of all manned OCS facilities (i.e. fixed facilities, floating facilities, and mobile offshore drilling units (MODU's) engaged in OCS activities) to develop and be prepared to implement emergency evacuation procedures that address all of the recognized circumstances and conditions that would require an evacuation of the facility.

In developing the final rule, the Coast Guard considered the diversity of the environmental conditions that exist on the OCS and the varying operational characteristics of fixed OCS facilities and MODU's. The Coast Guard believes that the final rule provides sufficient flexibility for operators to develop a site specific EEP which will address the specific evacuation needs of each OCS facility. The final rule allows operators to explore and, where possible, integrate the latest technology available to ensure the safety of OCS workers.

To ensure that the EEP's adequately address all of the recognized circumstances and conditions that may result in evacuation of the facility, the Coast Guard will review and, if acceptable, approve each EEP before it is placed on the facility.

Discussion of Comments and Changes to the Regulation

A total of forty-two letters were received in response to the NPRM. Forty letters generally supported the concept of an evacuation per-performance standard but all of the letters contained suggestions for revising the proposed regulations. Two letters opposed the proposed regulations and suggested that they were not needed. The comments and the resulting changes are discussed below.

1. Three comment letters received from offshore industry associations requested extension of the original comment period because of the importance of this regulatory initiative and the difficulty their members were experiencing in providing a meaningful response within the original 30 day comment period.

The Coast Guard agreed with this request and extended the comment period for an additional 30 days until February 25, 1985, (53 FR 2236; January 26, 1988).

2. Two comments objected to the proposal because they believed that the proposed rulemaking duplicated already existing Department of Transportation regulations in 49 CFR Part 192 and that compliance with the proposed rules, therefore, would be redundant and burdensome. They suggested that the proposed rules be removed from consideration as they offer no improvement to current regulations.

This suggestion was not adopted. Part 192 of Title 49 of the Code of Federal Regulations is limited to matters relating to the transportation of gas by pipeline. Section 192.615 requires gas pipeline operators to establish written procedures to minimize the hazards resulting from a gas pipeline emergency. Only facilities engaged in gas pipeline operations are required to comply with § 192.615. The EEP regulations apply to all OCS facilities. Gas pipeline facility operators, however, may include pertinent sections of the gas pipeline emergency procedures in their EEP or submit the gas pipeline emergency procedures to the Coast Guard for review if the operator feels it complies with the EEP regulations.

3. Three comments stated that 46 U.S.C. 2304 already allows any vessel to respond to calls for assistance without

being required to meet additional regulations. One of the comments also stated that 46 U.S.C. 3501(e) already authorizes an offshore supply vessel (OSV) to carry passengers in an emergency. In view of these provisions, all three comments suggested that it is improper for the Coast Guard to require that standby vessels be certificated.

The EEP regulations would not prohibit a vessel from responding to a call for assistance under the provisions of 43 U.S.C. 2304 or prohibit OSV's from carrying passengers during an emergency. However, any vessel that is designated as a facility's standby vessel in an EEP, thus making the rescue or evacuation of OCS personnel its primary duty, will be required to be in compliance with the requirements contained in § 143.401(a). Therefore, this suggestion was not adopted.

4. Fifteen comments stated that the requirement for a standby vessel to be certificated to carry all of the persons on the most populated facility that the standby vessel is designated to assist is excessive. The comments stated that few vessels exist that could meet this requirement.

Proposed § 143.401(b) was intended to ensure that the standby vessel would be capable of providing safe shelter for all of the evacuees that the vessel is to rescue. The Coast Guard has reevaluated proposed § 143.401(b) and agrees that it may be excessive. Therefore, § 143.401(b) has been revised to require that a standby vessel must be capable of carrying and providing safe shelter for 100 per cent of the persons on the most populated facility it is serving, rather than be certificated to carry all of those persons. Most clean, dry, interior spaces on a standby vessel, including crew spaces and corridors, could be considered safe shelter for emergency transportation of evacuees. Because revised § 143.401(b) no longer requires a designated standby vessel to be certificated to carry all the persons on the most populated facility it is designated to assist, the designated standby vessel would not be required by the vessel inspection regulations to provide bunks, seats, or life preservers for the personnel on the facility it is designated to assist. Therefore, a new § 143.401(c) has been added that requires a designated standby vessel to provide bunks or aircraft type reclining seats for 10 per cent of the persons on the most populated facility the vessel is designated to assist. This requirement was added in order to ensure that the vessel will be capable of accommodating individuals who may be physically injured or suffering from exhaustion. Crew spaces may be used to comply with this requirement. Also, a new § 143.405(a)(17) has been added that requires designated standby vessels to provide life preservers for 50 per cent of the persons on the most populated facility the vessel is designated to assist. This requirement was added to ensure that the designated standby vessel will be capable of providing life preservers for facility personnel in the event some of the personnel were unable to obtain a life preserver from the facility before evacuation to the designated standby vessel. Because standby vessels will no longer be required to be certificated to carry all the persons on the most populated facility the vessel is designated to assist, § 143.405(a)(16) has been revised to require the standby vessel to have an industrial first aid kit sized for 50 percent of the number of persons on the most populated facility the standby vessel is designated to assist. This revision was made to ensure that the designated standby vessel will have sufficient first aid supplies to treat injured evacuees.

5. One comment stated that vessels, when serving as designated standby vessels, should be prohibited from carrying hazardous materials and from carrying or storing goods or equipment on the decks of the vessel. The comment stated that such goods, equipment, and hazardous materials could inhibit the ability of the vessel to respond to emergencies.

The Coast Guard agrees with the comment and has added new § 143.401 (d) and (e) which prohibit designated standby vessels from carrying or storing hazardous materials and from carrying or storing goods, supplies, or equipment on the deck of the vessel or any other location that may hinder evacuation operations.

6. Three comments stated that the term "highly maneuverable" in reference to standby vessels in proposed § 143.403 lacks precision and is open to different interpretations as to what standard is acceptable. It was suggested that proposed § 143.403 be deleted because maneuverability appears to be sufficiently covered by § 143.405(a)(1).

The Coast Guard agrees with the comments and proposed § 143.403 has been deleted from the final rule.

7. Sixteen comments were received regarding the proposed requirement for a fast rescue boat (FRB). The comments stated that an FRB is difficult to launch and retrieve, particularly during heavy seas, and that special crew training would be required for proper operation of the boat. The comments suggested that the requirement for a fast rescue boat be deleted. Two of the comments stated that the requirement for a means of retrieving injured or helpless persons from the water contained in proposed § 143.405(a)(8) is sufficient. The comments stated that modern offshore supply vessels and crewboats often are highly maneuverable and can be equipped or modified for direct pickup of persons from the water.

The Coast Guard has reevaluated this issue and partially agrees with the comments. The Coast Guard believes that all standby vessels must be equipped with a safe and effective means of retrieving persons from the water, particularly helpless or injured persons. Although the Coast Guard believes that FRB's have been proven to be one of the best means for retrieving persons from the water, it recognizes that, in some sea states, the FRB's themselves can be difficult to launch and retrieve. The Coast Guard also agrees that OSV's and crewboats may be capable of being equipped or modified to permit direct retrieval of persons from the water onto the deck of those vessels. Therefore, the proposed requirement for an FRB has been replaced with § 143.405(a)(7), which requires that a means for retrieving persons, including helpless and injured persons, from the water be provided. The means of retrieval may be either a FRB or some other type of equipment or modification installed on the standby vessel. Under § 143.405(a)(7), the means of retrieving persons from the water must be demonstrated to the satisfaction of the Officer in Charge, Marine Inspection.

8. Four comments stated that immersion and buoyant suits are already required by Coast Guard regulations for vessels operating above 32 degrees north latitude. The comments stated that the EEP rules should not expand upon this requirement and suggested that proposed § 143.405(a)(11) be deleted.

After reevaluating the proposed requirement the Coast Guard agrees that immersion and or buoyant suits should be required only on standby vessels operating above 32 degrees north latitude in the Atlantic Ocean or north of 35 degrees north latitude in all other waters. However, current Coast Guard regulations for immersion/buoyant suits are not applicable to crewboats or other vessels certificated under Subchapters T or H of 46 CFR Chapter I. Therefore, § 143.405(a)(10) has been retained but revised to apply only to standby vessels operating in those colder waters.

9. Six comments stated that the 600 gallons per minute (gpm) fire monitor

required in proposed § 143.405(a)(13) is not of a standard size commonly found in the offshore industry. In order to permit the use of fire monitors currently found in the offshore industry, the comments suggested that the monitor size be changed to either 500 or 750 gpm.

The Coast Guard agrees with this suggestion and has revised § 143.405(a)(12) to require a fire monitor with a flow rate of at least 500 gpm.

10. One comment stated that, in addition to requiring a means of radio communication between facilities and standby vessels, the regulations should require a means of communicating with helicopters and other rescue craft that may take part in an evacuation.

The Coast Guard agrees with the comment and §§ 143.405(a)(13) and 146.140(d)(5) have been revised respectively to require standby vessels and facilities to be capable of communicating with other rescue craft.

11. Six comments stated that the standby vessel crew size should be determined by the vessel owner and that facility operator. It was suggested that proposed § 143.407 be revised to allow the vessel owner and facility operator sufficient flexibility in determining the crew size which best supports the facility's EEP.

The manning requirement in proposed § 143.407 represents the minimum crew size that the Coast Guard believes is necessary to properly crew a standby vessel. However, there will be cases in which the Officer in Charge, Marine Inspection, (OCMI) believes that the crew designated on the vessel's certificate of inspection for 24 hour operation is not sufficient to carry out the functions required of the vessel when it is operating as a standby vessel. In those cases, the OCMI is authorized under § 143.407 to require additional crewmembers as necessary. The vessel owners or the facility operator may increase the crew size above the minimum set by the OCMI if they believe additional crewmembers are needed. Therefore, this suggestion was not adopted.

12. Four comments stated that the EEP regulations should contain a requirement for periodic evacuation drills. The comments stated that periodic interactive drills that test and exercise all the key elements of the EEP are needed to verify that the plan continues to be viable.

The Coast Guard agrees that periodic drills are necessary to ensure that all personnel are familiar with the EEP. Therefore, a new § 146.125(c) has been added to require that abbreviated EEP drills be held monthly and that a comprehensive drill exercising all elements of the EEP be conducted annually. Also, a new § 146.140(e)(3) has been added to require the operator to ensure that the drills are conducted.

13. Two comments stated that development of a separate EEP for each facility may not be necessary. The comments suggested that the regulations should allow the development of EEP's covering several facilities in a general geographic location.

The Coast Guard agrees with the comments and has revised § 146.140(b) to permit the development of an EEP covering multiple sites in the same geographic area. However, care should be exercised in the development of EEP's covering more than one facility to ensure that the specific needs of each facility are addressed and that the plan does not become overly complicated or so voluminous that its usefulness is jeopardized.

14. Four comments questioned the need to submit the EEP to the OCMI for examination. The comments suggested that, instead of submitting the prepared EEP to the OCMI, the EEP should be maintained on the facility and made available to the Coast Guard for examination during an on-site inspection or upon request of the OCMI.

The Coast Guard believes that review of the EEP before it is placed on the facility will give the the Coast Guard the opportunity to inform the facility operator of areas in the plan that the Coast Guard found to be inadequately addressed and in need of revision. Therefore, this suggestion has not been adopted.

15. Three comments stated that the Coast Guard should review and approve EEP's instead of just examining them. The comments stated that, unless the Coast Guard requires the plans to be approved, there will be no way for the Coast Guard to reject an inadequate EEP.

The Coast Guard agrees with the comments and has revised § 146.140(a) and (b) to require the plans to be submitted to the OCMI for review and approval. The OCMI will review the EEP and determine if the plan addresses all the conditions and criteria contained in the EEP regulations. Plans that are determined to be satisfactory will be stamped "APPROVED" and returned to the facility operator with a letter indicating Coast Guard approval. Plans that are determined to be deficient will be stamped "RETURNED FOR REVISION" and returned to the facility operator with a letter identifying the areas that the Coast Guard found deficient and requiring the plan to be revised and resubmitted for approval within a specified period of time. Once the EEP is approved, a copy of the stamped plan and a copy of the accompanying Coast Guard approval letter are required to be maintained on the facility under revised § 146.140(b). Facility operators who fail to have their EEP approved by the Coast Guard will be subject to penalty under 33 CFR 140.35.

16. One comment suggested that EEP's for MODU's designate the master or person in charge of the MODU as the person who is primarily responsible for implementing the EEP under § 146.140(d)(7). The Coast Guard agrees and has added a new § 146.210(d) accordingly.

17. Three comments suggested that "other safe place," as used in proposed § 146.140(d)(10), be explained in the regulations. The Coast Guard agrees and has revised § 146.140(d)(12)(iv) to explain what are considered to be places of safety. The Coast Guard believes that places of safety may vary with the circumstances and conditions described in the EEP under § 146.140(d)(9). The EEP must provide for evacuation to land under certain situations and may provide for evacuation to a vessel, lifeboat, or another facility under other situations. For example, the EEP may provide for evacuation to a vessel, lifeboat, or another facility in the event of a localized fire on a facility. However, in the event of predictable incidents, such as ice floes, or storms exceeding the design characteristics of the facility, the EEP must provide for evacuation to land.

18. Three comments stated that, while the proposed rules require standby vessels to have a means of retrieving persons from the water, there is no similar requirement to provide for retrieving persons from the water if a standby vessel is not used. The comments suggested that the Coast Guard should include such a requirement in the regulations.

The Coast Guard agrees and has added § 146.140(d)(12)(i) to require that the EEP identify the means that will be used to retrieve persons from the water during an evacuation.

19. Two comments stated that the proposed rules did not require facility operators to identify in the EEP the means that would be used to transfer persons from the facility to a standby vessel or other craft and to retrieve those persons from the standby vessel or craft onto, for example, another facility.

The Coast Guard agrees and has added § 146.140(d)(12)(ii) and (d)(12)(iii) to require that the EEP identify the

means that will be used to transfer facility personnel to and from standby vessels, lifeboats, or other types of evacuation craft.

20. One comment stated that the requirement in proposed § 146.140(f) that a written summary of the EEP be given to each person newly reporting on the facility is a needless expense and that the EEP may be difficult to summarize.

The Coast Guard agrees that the EEP may be difficult to summarize but believes that persons newly reporting on the facility should be made aware of the contents of the EEP. Therefore, § 146.140(f) has been revised to require that either a brief written summary or an oral briefing on the EEP be given each person newly reporting on the facility.

21. Eight comments stated that standby vessels or some sort of vessel support is necessary in order to ensure the safe emergency evacuation of OCS facilities. The comments suggested that the Coast Guard require facility operators to provide standby vessels or some form of vessel support for the emergency evacuation of OCS facilities. The Coast Guard agrees that standby vessels, in some cases, could enhance the safety of some OCS facilities. However, the high cost of providing a properly equipped and manned standby vessel may not always be justified under the circumstances of each case. The Coast Guard believes that evacuation measures using equipment other than standby vessels, such as helicopters, may prove to be equally effective and more cost efficient in many emergency evacuation situations. Therefore, the suggestion that standby vessels be required in every case was not adopted.

22. Ten comments stated that OCS facility operators should be responsible for submitting EEP's only for fixed facilities on their leases and not for MODU's. (An "operator" of an OCS facility is defined in § 140.10 as meaning the leaseholder or person controlling or managing the lease area or a portion of the lease area and "OCS facility" means a fixed or floating facility, as well as a MODU in contact with seabed.) The comments stated that operators are not always familiar with the MODU's equipment and that the MODU owners are best able to determine the evacuation criteria for their units. The comments suggested that MODU owners should be required to develop and submit the EEP for their MODU's.

It is critical that EEP's be comprehensive and coordinated from a single source. The Coast Guard believes that operators will be able to develop EEP's that will allow for the easy incorporation of MODU specific data. Operators would be responsible for developing the EEP, determining the means of transportation to a place of safety, providing the shoreside support and the weather forecasting service, and listing the duties of the persons to be contacted in event of an emergency. MODU owners should be able to readily provide the operators with the data needed to incorporate the MODU's equipment and design criteria into the EEP. Therefore, this suggestion was not adopted.

Incorporation by Reference

The material, "Standard for Marine Buoyant Devices" (ANSI/UL1123–1987), in § 147.7 has been approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 552 and 1 CFR Part 51. The material is available as indicated in that section.

If substantive changes are made by the publisher to the materials incorporated, those changes may be considered for incorporation. However, before taking final action on the incorporation, the Coast Guard will publish a separate notice in the Federal Register for public comment.

The reference to the SOLAS Convention in § 143.405(a)(5) of the NPRM has been deleted in the final rule and, therefore, from the list of materials in § 140.7. Section 140.7 is revised to conform with a new format that lists the sections throughout Subchapter N in which the incorporated material appears.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and significant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). This rule is considered significant because of the high level of public and Congressional interest in this project. A final regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Office of the Marine Safety Council, Room 3600, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593–0001, (202) 267–1477, from 8 a.m. to 3 p.m. Copies may also be obtained by contacting that office.

The cost of preparing an EEP may vary due to the varying complexity of the manned facilities operating on the OCS and the experience of the preparer in drafting emergency evacuation plans. Much of the required information is already available and is customarily provided to operating personnel. However, some information not previously required may need to be compiled.

The Coast Guard estimates the cost of preparing a plan which meets these regulations to be approximately $725 per facility. The total initial cost to industry for providing an EEP for each manned facility, including MODU's, is estimated to be approximately $785,000. The total cost to the Coast Guard to review and approve an EEP is estimated to be $100 per plan.

Specific comments were solicited on the costs of preparing and updating EEP's for OCS facilities and several comments were received. Two comments were received on the costs of preparing and updating the EEP's. The comments estimated that the cost of preparing and updating EEP's would be at least $2,000 per OCS facility. Neither comment provided a specific analysis of what their estimated costs included. The Coast Guard reconsidered its cost estimates for preparing and updating an EEP and concluded that they are reasonable. The Coast Guard estimated cost represents the estimated average cost for preparation and update of an EEP. The Coast Guard recognizes that the costs may be higher for some companies. However, many facility owners already have some basic evacuation procedures in effect and much of the information required by the EEP regulations is readily available. Further, many facility owners will be able to prepare one EEP that can be made applicable to numerous facilities because of their close geographic location and similar design and equipment (§ 146.140(b)). Recent regulations (52 FR 6974; March 6, 1987) require that MODU operating manuals provide information for use in emergency situations (46 CFR 109.121). EEP's may incorporate certain portions of the operating manual to avoid unnecessary duplication and cut preparation costs.

Five comments were received on the cost to the Coast Guard for the examination of each EEP. All five comments questioned whether the Coast Guard could conduct an indepth review of an EEP for $100 a plan. The Coast Guard based its cost estimate on its experience in the review of other documents, on its assumption that many of the plans, particularly those submitted by the same operator, will be similar, and on its estimate that it will take an average of three man hours to review each plan. Though the initial costs for reviewing and approving the first EEP's submitted for approval may

be higher, we feel our cost estimates for review of all the EEP's are reasonable.

Specific comments were solicited on the costs of equipping a certificated vessel as a standby vessel and on the anticipated use of standby vessels. For the purpose of evaluating this rule, the Coast Guard assumed that up to 30 standby vessels would be designated in EEP's. The Coast Guard estimated the cost of equipping a certificated offshore supply vessel or crew boat to comply with the standby vessel requirements contained in the EEP regulations to be between $6,600 and $25,400. Based on these assumptions, tbe total initial cost to the support vessel industry to outfit certificated vessels as standby vessels is estimated to be between $198,000 and $762,000. These costs are lower than the ones contained in the NPRM's draft regulatory evaluation because the cost of equipping a designated standby vessel with a fast rescue boat (FRB) has been eliminated by the removal of the FRB requirement from the final rule. The Coast Guard estimated that the day rate for vessels equipped and manned as standby vessels would increase an average of $177 per day. Further, the total cost to the lease operators employing these 30 standby vessels is estimated to be between $8,366,000 and $9,057,000 per year.

Two comment letters were received on the Coast Guard's estimated increase in the day rate for vessels used as standby vessels. The comments stated that the day rate for an offshore supply vessel (OSV) or crewboat equipped to comply with the standby vessel standards contained in the regulations would increase $200 to $500 per day. In developing its estimate of the maximum increase in the day rate for a vessel equipped and manned as a standby vessel, the Coast Guard gathered information from offshore information services and marine suppliers. The Coast Guard's estimate of the average increase ($177) in the day rate is believed to be reasonable.

Several comments concerning the number of standby vessels likely to be used under these regulations were received. One comment stated that the Coast Guard's estimate of the number of standby vessels likely to be employed in OCS operations (30) is too low. However, the comment did not provide an alternate figure on the contention that an accurate count could not be determined until facility operators had completed their impact assessment of the rules. Six comments on the estimated number of standby vessels stated that few, if any, standby vessels would be employed if the vessels were required to comply with the proposed § 143.401(b). The proposed regulation would have required designated standby vessels to be certificated to carry all the persons on the most populated OCS facility that the standby vessel is designated to serve. The comments stated that few existing vessels would be able to meet the proposed requirement and the cost of modifying an existing vessel or building new ones to comply with this requirement would be prohibitive. The Coast Guard has reconsidered this requirement and has revised § 143.401(b) in the final rule to require that standby vessels be capable of carrying and sheltering 100 per cent of the personnel on the most populated facility that the vessel is designated to assist, rather than being certificated for the routine carriage of that number of persons. However, the comments provided no additional data on the number of standby vessels that would be used if the proposed § 143.401(b) was deleted.

The primary objective of this rulemaking is to address evacuation planning for OCS facilities, including MODU's, thereby enhancing the safety of life and property on the OCS. However, it is difficult, if not impossible, to quantify the benefits of the regulations because of the unpredictable occurrence and limitless variety of emergency situations in which EEP's would be of assistance. Although EEP's would not replace well trained personnel, they can be of significant benefit. Recent estimates of the value of a human life have ranged from $1,000,000 to $11,000,000. The saving of only a few lives each year would make the preparation of the evacuation plans and the additional requirements imposed on designated standby vessels cost beneficial.

Regulatory Flexibility Act

These regulations will affect owners and operators of manned OCS facilities and the owners, builders, and suppliers of designated standby vessels. Because of the extremely high cost of these manned facilities, their owners and operators tend to be major corporations. However, it is likely that at least some of the companies opting to enter the designated standby vessel business may be considered small entities. An estimate for outfitting a typical certificated vessel as a standby vessel is between $6,600 and $25,400. Because the use of designated standby vessels is voluntary, we have no basis for estimating how many standby vessels will be employed. For the purposes of evaluating this rulemaking, we have assumed that a total of 30 standby vessels will be employed. Based on these assumptions, the total initial cost to the support vessel industry to outfit certificated vessels as standby vessels will be between $198,000 and $762,000. Further, we estimate that the day rate for a standby vessel outfitted according to the regulations will increase by as much as $177 a day over the day rate for the same vessel without standby vessel equipment in order to cover the added expenses.

The Coast Guard requested that individuals who believe that their business may qualify as a small entity and felt that the proposed rules would have a significant economic impact on their business notify the Coast Guard and explain why they felt their business qualified. Such individuals were requested to explain in what way and to what degree they would be economically effected by the proposed regulations.

Six comments were received on the impact of this rulemaking on small entities. Though none of the six comments explained why they felt their businesses qualified as a small entity, they all believed that proposed § 143.401 on certification requirements for standby vessels and proposed § 143.405 on standby vessel equipment would have a significant economic impact on small boat companies. The comments stated that none of the current vessels operating on the OCS could comply with proposed § 143.401(b) and that few of the small boat owners would be able to afford to equip their vessels with all the equipment proposed in § 143.405, particularly the fast rescue boat (FRB). The comments stated that if the Coast Guard persisted in implementing these regulations that it would mean the end of the many small boat companies. The Coast Guard has reconsidered §§ 143.401 and 143.405 and deleted the requirement that a standby vessel be certificated to carry all the persons on the facility it is serving, and the requirement for a FRB, to lessen the economic impact of the regulations without decreasing the level of safety intended by this rulemaking.

Further, a concern was expressed during the Subcommittee hearing as to whether these rules would affect the continued use of those vessels commonly referred to as "field boats" (i.e., vessels, usually small, used to carry materials and personnel between OCS facilities). These regulations will not affect field boats unless they are designated as standby vessels for the purposes of the EEP.

For the above reasons, the Coast Guard certifies under section 605(b) of

the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains information collection requirements in §§ 146.140 and 146.210. These items have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). When approved, these items will become effective on a date to be published in the **Federal Register.**

Federalism Implications

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

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that preparation of an environmental impact statement is not necessary. This rulemaking concerns the development of emergency evacuation plans and the equipping of standby vessels for emergency assistance and would have no effect on the environment.

The regulations have been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with sections 2.B.2.c and 2.B.2.l of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and is included in the regulatory docket. (See address in "E.O. 12291 and DOT Regulatory Policies and Procedures.")

List of Subjects

33 CFR Part 140

Administrative practice and procedure, Authority delegation, Continental shelf, Incorporation by reference, Law enforcement, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 143

Continental shelf, Marine safety.

33 CFR Part 146

Continental shelf, Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Parts 140, 143, and 146 of Title 33 of the Code of Federal Regulations are amended as follows:

PART 140—GENERAL

1. The authority citation for Part 140 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46.

2. Section 140.7 is revised to read as follows:

§ 140.7 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subchapter with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC and at U.S. Coast Guard, Merchant Vessel Inspection and Documentation Division (G-MVI), 2100 Second Street, SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this subchapter and the sections affected are as follows:

American National Standards Institute (ANSI)	
1430 Broadway, New York, NY 10018	
ANSI A10.14-1975—Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Drop Lines for Construction and Industrial Use	142.42
ANSI/UL1123-1987—Standard for Marine Buoyant Devices	143.405
ANSI Z41-1983—American National Standard for Personal Protection-Protective Footwear	142.33
ANSI Z87.1-1979—Practice for Occupational and Educational Eye and Face Protection	142.27
ANSI Z88.2-1980—Practices for Respiratory Protection	142.39
ANSI Z89.1-1981—Safety Requirements for Industrial Head Protection	142.30
International Maritime Organization (IMO)	
IMO Sales, New York Nautical Instrument and Service Corp., 140 W. Broadway, New York, NY 10013	
IMO Assembly Resolution A.414 (XI) Code for Construction and Equipment of Mobile Offshore Drilling Units	143.207; 146.205

3. In § 140.10, a new term is added in alphabetical order to read as follows:

§ 140.10 Definitions.

* * * * *

"Standby vessel" means a vessel meeting the requirements of Part 143, Subpart E, of this chapter and specifically designated in an Emergency Evacuation Plan under §§ 146.140 or 146.210 of this chapter to provide rapid evacuation assistance in the event of an emergency.

* * * * *

PART 143—DESIGN AND EQUIPMENT

4. The authority citation for Part 143 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46.

5. In Part 143, a new Subpart E is added to read as follows:

* * * * *

Subpart E—Standby Vessels

Sec.
143.400 Applicability.
143.401 Vessel certification and operation.
143.405 Equipment.
143.407 Manning.

Subpart E—Standby Vessels

§ 143.400 Applicability.

This subpart applies only to standby vessels meeting the requirements of this subpart and specifically designated in an Emergency Evacuation Plan (EEP) required by §§ 146.140 or 146.210 of this chapter to provide rapid evacuation assistance in the event of an emergency.

§ 143.401. Vessel certification and operation.

Standby vessels must meet the following:

(a) Have a valid certificate of inspection issued in compliance with Subchapters H, I, or T of 46 CFR Chapter I.

(b) Be capable of carrying and providing shelter for 100 per cent of the number of persons on the most populated facility that the standby

vessel is designated to assist. Crew spaces may be used to meet the requirements of this section.

(c) Provide bunks or aircraft type reclining seats for 10 per cent of the number of persons on the most populated facility that the standby vessel is designated to assist. Crew spaces may be used to meet the requirements of this section.

(d) Not carry or store goods, supplies, and equipment on the deck of the standby vessel or in other locations that may hinder the vessel's ability to render assistance to the facility that the vessel is designated to assist.

(e) Not carry or store any hazardous material.

§ 143.405. Equipment.

(a) Standby vessels must have, at least, the following equipment:

(1) Multiple propellers or propulsion devices.

(2) Two searchlights.

(3) For vessels certificated under Subchapter H of 46 CFR Chapter I, a line throwing appliance that meets the requirements in 46 CFR 75.45.

(4) For vessels certificated under Subchapters I or T of 46 CFR Chapter I, a line throwing appliance that meets the requirements of 46 CFR 94.45.

(5) A Stokes or comparable litters.

(6) One blanket for each person on the most populated facility that the standby vessel is designated to assist.

(7) Means for safely retrieving persons, including injured or helpless persons, from the water. The means of retrieval must be demonstrated to the satisfaction of the Officer in Charge, Marine Inspection.

(8) A scramble net that can be rigged on either side of the standby vessel.

(9) A minimum of four Coast Guard approved ring life buoys, each equipped with 15 fathoms of line.

(10) An immersion suit approved by the Coast Guard under 46 CFR 160.171, or a buoyant suit meeting Supplement A of ANSI/UL–1123–1987 and approved under 46 CFR 160.053, for each member of the standby vessel's crew when the standby vessel operates north of 32 degrees north latitude in the Atlantic Ocean or north of 35 degrees north latitude in all other waters.

(11) Two boat hooks.

(12) A fire monitor with a minimum flow rate of, at least, 500 gallons per minute.

(13) One two-way radio capable of voice communications with the OCS facility, helicopters or other rescue aircraft, rescue boats, and shore side support personnel.

(14) Floodlights to illuminate the personnel and boat retrieval area, the scramble net when deployed, and the water around the personnel retrieval and scramble net deployment areas.

(15) A copy of "The Ship's Medicine Chest and Medical Aid at Sea", DHHS Publication No. (PHS) 84–2024, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(16) An industrial first aid kit sized for 50 percent of the number of persons on the most populated facility that the standby vessel is designated to assist.

(17) Coast Guard approved life preservers for 50 percent of the number of persons on the most populated facility that the standby vessel is designated to assist.

(b) Equipment required by paragraph (a) of this section must be to the satisfaction of the Officer in Charge, Marine Inspection.

§ 143.407 Manning.

Standby vessels must be crewed in accordance with their certificate of inspection for 24 hour operation. The Officer in Charge, Marine Inspection, may require the crew to be augmented, as necessary, to provide for maneuvering the standby vessel, for lookouts, for rigging and operating retrieval equipment, and for caring for survivors.

PART 146—OPERATIONS

6. The authority citation for Part 146 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46.

7. In § 146.125, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 146.125 Emergency drills.

* * * * *

(c) *Emergency evacuation drills.* The following emergency evacuation drills must be conducted:

(1) At least once a year, all the elements of the Emergency Evacuation Plan (EEP) under § 146.140 relating to the evacuation of personnel from the facility must be exercised through a drill or a series of drills. The drill(s) must exercise all of the means and procedures listed in the EEP for each circumstance and condition described in the EEP under § 146.140(d)(9).

(2) At least once a month, a drill must be conducted that demonstrates the ability of the facility's personnel to perform their duties and functions on the facility, as those duties and functions are described in the EEP. If a standby vessel is designated for that facility in the EEP, the vessel must be positioned as described in the EEP for an evacuation of that facility and the vessel's crew must demonstrate its ability to perform its duties and functions under the EEP.

* * * * *

8. New § 146.140 is added to read as follows:

§ 146.140 Emergency Evacuation Plan.

(a) The operator of each manned OCS facility shall develop an Emergency Evacuation Plan (EEP) for the facility which addresses all of the items listed in paragraph (d) of this section. The EEP may apply to more than one facility, if the facilities are located in the same general geographic location and within the same Coast Guard Officer in Charge, Marine Inspection (OCMI) zone; if each facility covered by the EEP is specifically identified in the EEP; and if the evacuation needs of each facility are accommodated. For facilities existing on June 19, 1989, the EEP must be submitted to the OCMI having jurisdiction over the facility before December 18, 1989. For facilities not existing on June 19, 1989, the EEP must be submitted to the OCMI having jurisdiction over the facility, 30 days before placing the facility in operation. The OCMI reviews the EEP to determine whether all items listed in paragraph (d) of this section are addressed for each facility included in the EEP. If the OCMI determines that all items in paragraph (d) of this section are addressed, the OCMI stamps the EEP "APPROVED" and returns it, together with a letter indicating Coast Guard approval, to the operator. If the OCMI determines that any item is not addressed, the OCMI stamps the EEP "RETURNED FOR REVISION" and returns the EEP, together with an explanation of the EEP's deficiencies, to the operator.

(b) Once the EEP is approved under paragraph (a) of this section, the facility operator shall ensure that a copy of the EEP and the letter indicating Coast Guard approval is maintained on the facility.

(c) The EEP must be resubmitted for approval when substantive changes are made to the EEP. Only the pages affected by a change need be resubmitted if the EEP is bound in such a way as to allow old pages to be removed easily and new ones inserted. Substantive changes include, but are not limited to, installation of a new facility within the area covered by an EEP, relocation of a MODU, changes in the means or methods of evacuation, or changes in the time required to accomplish evacuation.

(d) The EEP must, at a minimum,

(1) Be written in language that is easily understood by the facility's operating personnel;

(2) Have a table of contents and general index;

(3) Have a record of changes;

(4) List the name, telephone number, and function of each person to be contacted under the EEP and state the circumstances in which that person should be contacted;

(5) List the facility's communications equipment, its available frequencies, and the communications schedules with shore installations, standby vessels, rescue aircraft, and other OCS facilities specified in the EEP;

(6) Identify the primary source of weather forecasting relied upon in implementing the EEP and state the frequency of reports when normal weather is forecasted, the frequency of reports when heavy weather is forecasted, and the method of transmitting the reports to the facility;

(7) Designate the individual on each facility covered by the EEP who is assigned primary responsibility for implementing the EEP;

(8) Designate those facility and shoreside support personnel who have the authority to advise the person in charge of the facility as to the best course of action to be taken and who initiate actions to assist facility personnel;

(9) Describe the recognized circumstances, such as fires or blowouts, and environmental conditions, such as approaching hurricanes or ice floes, in which the facility or its personnel would be placed in jeopardy and a mass evacuation of the facility's personnel would be recommended;

(10) For each of the circumstances and conditions described under paragraph (d)(9) of this section, list the pre-evacuation steps for securing operations, whether drilling or production, including the time estimates for completion and the personnel required;

(11) For each of the circumstances and conditions described under paragraph (d)(9) of this section, describe the order in which personnel would be evacuated, the transportation resources to be used in the evacuation, the operational limitations for each mode of transportation specified, and the time and distance factors for initiating the evacuation; and

(12) For each of the circumstances and conditions described under paragraph (d)(9) of this section, identify the means and procedures—

(i) For retrieving persons from the water during an evacuation;

(ii) For transferring persons from the facility to designated standby vessels, lifeboats, or other types of evacuation craft;

(iii) For retrieving persons from designated standby vessels, lifeboats, or other types of evacuation craft if used; and

(iv) For the ultimate evacuation of all persons on the facility to land, another facility, or other location where the evacuees would be reasonably out of danger under the circumstance or condition being addressed.

(e) The operator shall ensure that—

(1) All equipment specified in the EEP, whether the equipment is located on or off of the facility, is made available and located as indicated in the EEP and is designed and maintained so as to be capable of performing its intended function during an emergency evacuation;

(2) All personnel specified in the EEP are available and located as specified in the EEP and are trained in fulfilling their role under the EEP; and

(3) Drills are conducted in accordance with § 146.125(c).

(f) A complete copy of the EEP must be made available to the facility's operating personnel and a brief written summary of, or an oral briefing on, the EEP must be given to each person newly reporting on the facility.

(g) A copy of the EEP must be on board each standby vessel, if any, designated in the EEP and provided to all shoreside support personnel, if any, specified in the EEP.

9. A new § 146.210 is added to read as follows:

§ 146.210 Emergency evacuation plan.

(a) Except as otherwise provided in this section, the requirements applicable to Emergency Evacuation Plans (EEP's) on manned OCS facilities under § 146.140 are applicable to MODU's.

(b) An EEP must be submitted by—

(1) The holder of a lease or permit under the Act for each MODU within the area of the lease or the area covered by the permit; or

(2) The operator under 30 CFR 250.2(gg), if other than the holder of a lease or permit, for each MODU within the area in which the operator controls or manages operations.

(c) To avoid unnecessary duplication, the EEP may incorporate by reference pertinent sections of the MODU's operating manual required by 46 CFR 109.121.

(d) In complying with § 146.140(d)(7), the EEP must designate the master or person in charge of the MODU under 46 CFR 109.107 as the individual who is assigned primary responsibility for implementing the EEP, as it relates to that MODU.

Dated: March 8, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-11626 Filed 5-17-89; 8:45 am]

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Federal Register

Thursday
May 18, 1989

Part IV

Department of Education

34 CFR Part 263

Indian Fellowship Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 263

Indian Fellowship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Indian fellowship program to make certain technical amendments, provide for the awarding of fellowships primarily on the basis of scholastic merit, and remove the detailed examples of eligible fields of study. These amendments are needed to ensure that the fellowships are awarded to individuals who are most likely to obtain degrees, based on previous scholastic performance, and to remove unnecessary regulations.

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: Dorothea Perkins, Fellowship Coordinator, Office of Indian Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, (Mail Stop 6335), Washington, DC 20202. Telephone (202) 732-1909.

SUPPLEMENTARY INFORMATION: On October 12, 1988, the Secretary published a notice of proposed rulemaking for the Indian Fellowship Program in the **Federal Register** (53 FR 39876). The explanatory statements in the preamble to the notice of proposed rulemaking (NPRM) are fully applicable. For the sake of brevity, those statements are not being reprinted here.

Except for minor editorial and technical revisions, there is no difference between the NPRM and these final regulations.

Analysis of Comments and Changes

Comments: Two comments were received concerning the proposal to award fellowships primarily on the basis of scholastic merit. One commenter felt that the award of fellowships based on scholastic merit would be a disadvantage to applicants from reservations, alleging that these students do not perform well during the first two years of college. The commenter suggested that special consideration be given to this group of applicants. The second commenter expressed concern that the proposed emphasis on scholastic merit would tend to exclude American Indian students who possess "eminence credentials" (i.e., extensive experience and knowledge in their Indian culture, language, and history), stating that these students are less apt to achieve scholastically than Indian students who are more assimilated in the dominant culture. This commenter suggested that experience and knowledge in Indian culture be given consideration equal to scholastic achievement.

Discussion: Available data do not show that students from reservations have lower grade point averages than Indian students from non-reservation schools. Standardized test scores, which are also considered in determining scholastic merit, are evaluated in light of the average standardized test scores of American Indian students, including reservation-based students, rather than the general student population. The Secretary believes this practice helps to reduce the effect of inequities resulting from institutional or regional differences in the quality of education received. The Department will review the FY 1989 applicants' grade point averages (GPAs) to determine whether there is a significant difference in the GPAs of these groups and if such a difference has an effect on applicants' success in obtaining a fellowship.

The intent of the proposal to base fellowship awards on scholastic merit is to ensure that the students who receive fellowships are the most likely to complete their degree programs. In some cases, this may require students to improve their scholastic records, particularly with respect to the planned field of study, before applying for a fellowship. However, leadership and commitment in the Indian community will also continue to be decisive factors in the selection process.

In addition, the Secretary believes it is important that limited Federal funds aid those who are most in need. The Department of Education will examine the income distribution of students receiving these fellowships to determine whether further regulation to limit participation on the basis of financial need versus merit is appropriate.

Changes: None.

Comments: A commenter suggested that certain changes be made in sections pertaining to application requirements. The commenter suggested that § 263.12(d)(2)(i) be revised to state that college as well as high school references may submit letters of assessment and that § 263.12(d)(2)(ii) be revised to make it clear that professors and academic advisors do not have to be connected to programs funded under Subpart 1 of the Indian Education Act of 1988. Concerning § 263.22, the commenter suggested that the application requirements for fellowships after the first year of funding be simplified by eliminating the requirement for assessment letters and essays.

Discussion: Professors and academic advisors who submit letters of assessment do not have to be involved in Indian Education Act projects. The term "instructor" has the same meaning in these regulations that it had in the previous regulations; it includes college instructors as well as non-academic instructors. The Department will monitor the response to this section and consider further revisions and clarification for future rulemaking, if needed. Section 263.22 was not changed because letters of assessments and essays are not required for continuation applications.

Changes: A change was made to § 263.12(d)(2)(ii) to specify "college professor" and to rearrange the options under the category to make it clear that the modifier concerning Subpart 1 programs refers only to coordinators.

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.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmittal of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the responses 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 263

Colleges and universities, Education, Engineers, Health professions, Indians—Education, Law, Natural resources, Scholarships and fellowships.

Dated: April 11, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.087; Indian Fellowship Program)

The Secretary amends Part 263 of Title 34 of the Code of Federal Regulations as follows:

PART 263—INDIAN FELLOWSHIP PROGRAM

1. The authority citation for Part 263 is revised to read as follows:

Authority: 25 U.S.C. 2623, unless otherwise noted.

2. Section 263.1 is revised to read as follows:

§ 263.1 What is the Indian Fellowship Program?

The Indian Fellowship Program provides fellowships to enable Indian students to pursue a course of study leading to—

(a) A postbaccalaureate degree in medicine, law, education, psychology, clinical psychology, or a related field; or

(b) An undergraduate or postbaccalaureate degree in business administration, engineering, natural resources, or a related field.

(Authority: 25 U.S.C. 2623)

3. Section 263.2 is amended by revising paragraph (a)(3)(i), revising paragraph (b), removing paragraph (c), and revising the authority citation to read as follows:

§ 263.2 Who is eligible to apply under the Indian Fellowship Program?

(a) * * *

(3)(i) Currently in attendance or accepted for admission as a full-time undergraduate or postbaccalaureate student at an accredited institution of higher education in one of the fields listed in § 263.4 or a related field; and

* * * * *

(b) An applicant must not have obtained a terminal postbaccalaureate degree.

(Authority: 25 U.S.C. 2623)

4. Section 263.3 is amended by revising the definitions of *Expenses, Good standing, Indian, Stipend,* and *Undergraduate degree,* removing the definitions of *Dependent care, Financial aid need, Indian tribe,* and *Resources,* adding a new definition of *Dependent allowance* in alphabetical order, and revising the authority citation to read as follows:

§ 263.3 What definitions apply to the Indian Fellowship Program?

* * * * *

Dependent allowance means costs for the care of minor children who reside with the Fellow.

Expenses means tuition and required fees, required university health insurance, room, personal living expenses, and board at or near the institution, travel in cases of extreme hardship, instructional supplies, and dependent allowance.

* * * * *

Good standing means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

Indian means an individual who is—

(a) A member of an Indian tribe, band, or other organized group of Indians (as defined by the Indian tribe, band, or other organized group), including those Indian tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside;

(b) A descendant, in the first or second degree, of an individual described in paragraph (a) of this definition;

(c) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(d) An Eskimo, Aleut, or other Alaska Native.

* * * * *

Stipend means that portion of a fellowship award that is used for room and board and personal living expenses.

Undergraduate degree means a baccalaureate (bachelor's) degree awarded by an institution of higher education.

(Authority: 25 U.S.C. 2623, 2651)

5. Section 263.4 is revised to read as follows:

§ 263.4 What are the allowable fields of study?

(a) The following are allowable fields for a postbaccalaureate degree under this program:

(1) Medicine.

(2) Clinical Psychology.

(3) Law.

(4) Education.

(5) Psychology.

(b) The following are allowable fields for an undergraduate or postbaccalaureate degree under this program:

(1) Business Administration.

(2) Engineering.

(3) Natural resources.

(c) The Secretary considers, on a case-by-case basis, the eligibility of applications for fellowships in related fields of study.

(Authority: 25 U.S.C. 2623)

6. Section 263.5 is amended by removing the words "for each field of study" in paragraph (b) and by revising the introductory text of paragraph (a), paragraph (a)(2), and the authority citation to read as follows:

§ 263.5 What does a fellowship award include?

(a) The Secretary awards a fellowship in an amount up to, but not more than, the expenses as defined in this Part. The assistance provided by the program either—

* * * * *

(2) Supplements other financial aid, including Federal funding, other than loans, for meeting educational expenses.

* * * * *

(Authority: 25 U.S.C. 2623)

§ 263.6 [Amended]

7. An OMB control number is added and the authority citation for § 263.6 is revised to read as follows:

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 25 U.S.C. 2623)

§ 263.7 [Amended]

8. An OMB control number is added and the authority citation for § 263.7 is revised to read as follows:

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 25 U.S.C. 2623)

§ 263.8 [Amended]

9. Section 263.8 is amended by adding the words "the most current official" before the words "high school" in paragraph (a), and again before the word "undergraduate" in paragraph (b), and adding an OMB control number and revising the authority citation to read as follows:

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 25 U.S.C. 2623)

263.9 [Removed]

10. Section 263.9 is removed.

§ 263.11 [Amended]

11. The authority citation for § 263.11 is revised to read as follows:

(Authority: 25 U.S.C. 2623)

12. Section 263.12 is amended by removing "(c) and (d)" from paragraph (a) and adding, in their place, "(c), (d), and (e)", adding ", if applicable," after the words "grade and" in paragraph (c)(2), redesignating paragraph (d) as paragraph (e), adding new paragraph (d), revising the heading and introductory text of paragraph (c), paragraphs (c)(1) and (c)(3), the introductory text of redesignated paragraph (e), and redesignated paragraph (e)(1), adding an OMB control

number and revising the authority citation to read as follows:

§ 263.12 How does the Secretary evaluate applications?

* * * * *

(c) *Official academic record.* (80 points) (1) The Secretary considers the quality of the applicant's academic record and the applicant's potential for success in his or her field of study by reviewing the items in paragraphs (c) (2) and (3) of this section.

* * * * *

(3) The Secretary reviews the applicant's official transcripts and any grade reports and test scores.

(d) *Leadership.* (10 points) (1) The Secretary reviews documentation of any leadership positions held by the applicant while in school and three letters of assessment that address the applicant's potential for success and leadership in his or her field of study.

(2) The applicant shall submit three letters, one from each of the following groups:

(i) A school principal, a teacher, an academic or non-academic instructor or counselor.

(ii) A college professor, a coordinator of a project funded under Subpart 1 of the Indian Education Act of 1988, or an academic advisor.

(iii) A member of a parent committee for a project funded under Subpart 1 of the Indian Education Act of 1988, a tribal council member, or a civic leader who has observed the applicant in educational, social, or civic activities.

(e) *Commitment.* (10 points) (1) The Secretary considers the applicant's commitment by reviewing an educational commitment essay written by the applicant. The Secretary awards up to 10 points for this criterion.

* * * * *

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 25 U.S.C. 2623)

§ 263.13 [Amended]

13. Section 263.13 is amended by adding a new paragraph (a), designating the existing paragraph as paragraph (b), and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2623)

§ 263.13 What priority is given to certain applicants?

(a) The Secretary awards not more than 10 percent of the fellowships, on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education.

* * * * *

(Authority: 25 U.S.C. 2623)

14. Section 263.21 is revised to read as follows:

§ 263.21 Required certification of information.

To verify further the accuracy of the information provided in the application, the applicant shall provide all information and documents as requested by the Secretary, including information on other financial aid sources for educational purposes. The applicant's failure to provide the requested information and documents invalidates the application.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 25 U.S.C. 2623)

15. Section 263.22 is amended by revising the introductory text of paragraph (a), removing paragraph (b)(4), adding "of 1988" after the word "Act" in paragraph (b)(1), and adding the word "and" after the semicolon in paragraph (b)(2), removing the semicolon and the word "and" at the end of paragraph (b)(3) and adding a period in its place, revising paragraph (c), and revising the authority citation to read as follows:

§ 263.22 Time period for a fellowship.

(a) The Secretary awards a fellowship for a period of time set by the school as standard for the allowable field of study or for a period of time—

* * * * *

(c) A fellowship terminates when the Fellow receives the degree being sought or after the Fellow has received the fellowship for the maximum number of years allowed as defined in paragraph (a) of this section, whichever comes first.

* * * * *

(Authority: 25 U.S.C. 2623)

§ 263.23 [Amended]

16. Section 263.23 is amended by removing the word "year" in paragraph (a) and adding, in its place, the word "semester", adding the word "and" after the semicolon at the end of paragraph (b), removing the semicolon at the end of paragraph (c) and adding a period in its place, removing paragraphs (d) and (e), and adding an OMB control number and revising the authority citation to read as follows:

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 25 U.S.C. 2623)

§ 263.24 [Amended]

17. Section 263.24 is amended by removing "12" from paragraph (a), and adding, in its place "9", and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2623)

§ 263.25 [Amended]

18. Section 263.25 is amended by removing paragraph (a)(2), adding the word "or" after the semicolon at the end of paragraph (a)(1), redesignating paragraph (a)(3) as (a)(2), and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2623)

§ 263.26 [Removed]

19. Section 263.26 is removed.

20. Section 263.31 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (c), adding a new paragraph (b) and revising the authority citation to read as follows:

§ 263.31 Disbursement of funds.

(a) Funds are disbursed directly to the institution of higher education where a Fellow is enrolled. Stipends must be distributed to Fellows in installments by the institution. No fewer than two installments per academic year may be made.

(b) If the fellowship is vacated or discontinued—

(1) The Secretary may elect to allow the fellowship to follow the Fellow to another institution if the Fellow transfers during the current award period and maintains eligibility for the award;

(2) The Secretary may award the unexpended funds from the fellowship to an alternate applicant at that institution for a period of study that does not exceed the term or amount of the original fellowship; or

(3) The Secretary may require the institution to return the unexpended funds.

* * * * *

(Authority: 25 U.S.C. 2623)

[FR Doc. 89–11899 Filed 5–17–89; 8:45 am]

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May 18, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61 and 67

Pilots Convicted of Alcohol- or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 67

[Docket No. 25905; Notice No. 89-12]

RIN 2120-AC51

Pilots Convicted of Alcohol- or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes rules under which two or more alcohol- or drug-related motor vehicle convictions or related state administrative actions would be grounds for certificate action against a pilot. This notice also proposes rules under which a pilot's medical certificate would expire, requiring that the pilot apply for a new medical certificate, after an alcohol- or drug-related motor vehicle action. The notice proposes to require pilots to report alcohol- or drug-related motor vehicle actions to the FAA and proposes to add an express consent provision to facilitate FAA access to information reported to the National Driver Register. The proposed rules are needed to prohibit a pilot from operating an aircraft after multiple alcohol- or drug-related motor vehicle actions. The proposed rules are intended to enhance aviation safety by identifying persons who do not meet the medical standards of the regulations and by removing from navigable airspace pilots who have demonstrated an unwillingness or inability to comply with safety regulations.

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

ADDRESS: Comments on this notice may be delivered or mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25905, 800 Independence Avenue, SW., Room 915G, Washington, DC 20591. Comments must be marked: Docket No. 25905. Comments may be inspected in Room 915G between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Judie Craine, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9681.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the Federal Aviation Administration (FAA) to acknowledge receipt of their comments submitted in response to this notice of proposed rulemaking (NPRM) must submit with those comments a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25905. The postcard will be date stamped and returned to the commenters. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket."

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future rulemaking actions should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedures.

Background

On February 17, 1987, the Office of the Inspector General (OIG) for the U.S. Department of Transportation released the results of an audit of the FAA's airman medical certification program. The OIG evaluated the procedures used by the FAA to ensure that an individual with a history of alcohol- or drug-related problems is not issued an airman certificate and the procedures used to determine if an individual reports this information to the FAA in an accurate and timely manner.

The OIG used three automated files to conduct its audit: (1) An extract from a state driving file on alcohol- and drug-related motor vehicle offenses; (2) an extract from the National Driver Register (NDR); and (3) the FAA's active medical files. The OIG used these files to perform two comparisons for the audit. First, the OIG compared the FAA's medical file and the state records of alcohol- and drug-related traffic offenses. This comparison showed that 1,584 of the active pilots (3.4%) who held a driver's license issued by that state had at least one driving-while-intoxicated (DWI) or driving-under-the-influence (DUI) conviction. Of these pilots, 1,124 pilots (71%) did not report this information to the FAA.

The OIG also compared the FAA's medical file with the NDR records for individuals whose driver's licenses had been suspended or revoked based on alcohol- or drug-related traffic offenses. This comparison disclosed that the driver's licenses of approximately 10,300 of the 711,648 active airmen (1.45%) had been suspended or revoked for DWI or DUI offenses within the past 7 years. Of these pilots, 7,850 pilots (76%) failed to report these motor vehicle convictions to the FAA on their medical applications. The NDR Act contains statutory restrictions regarding access and use of NDR information. Thus, the OIG collected only statistical data from the NDR and did not obtain the names of specific airmen during the audit.

After the audit report was released, the OIG announced its intention to conduct two computer matches as part of an investigative effort to gather specific, detailed information (52 FR 5374; February 20, 1987) (52 FR 8545; March 18, 1987). For the first match, the OIG matched the Automated Medical Certification Data Base (the FAA's medical files) with certain Identification Records of criminal history information of the Federal Bureau of Investigation (FBI). For the second match, the OIG matched FAA's Automated Medical Certification Data Base with the State of Florida Department of Highway Safety and Motor Vehicles driver's license records involving alcohol- or drug-related traffic offenses. These one-time computer matches resulted in the identification of specific airmen who allegedly falsified applications for medical certificates by failing to report alcohol- or drug-related convictions.

The OIG has referred over 6,400 of these computer matches to the FAA for possible administrative action. The OIG also is referring some results of these matches to the Department of Justice for possible criminal action based on a violation of 18 U.S.C. 1001 for intentional falsification of an application for a medical certificate. On September 30, 1988, 27 airmen were indicted by a Federal grand jury in

Tampa, Florida for falsification of their medical certificate applications. The airmen were charged with making one or more false statements to the FAA by failing to disclose alcohol- or drug-related convictions on the airmen's application for a medical certificate. The OIG currently has investigations underway throughout the country and more indictments are expected.

Based on the information discovered during the audit, the OIG recommended that the FAA develop an objective, regulatory standard that would provide for FAA certificate action against pilots convicted of alcohol- or drug-related motor vehicle offenses. The OIG also recommended that the FAA seek legislative changes to the NDR statute that would give the FAA access to NDR information. The National Transportation Safety Board (NTSB) and the U.S. General Accounting Office (GAO) supported these recommendations.

Statistics do not now indicate a significant positive correlation between convictions for driving under the influence of alcohol or drugs and flying fatalities or accidents. However, information collected by the FAA shows that 6.0 percent of general aviation pilots killed in aircraft accidents, during the period from 1978 to 1987, had a blood alcohol level above 0.04 percent. Based on this information, the FAA has reason to believe that some intoxicated or impaired pilots may operate aircraft in the United States.

The FAA believes that it is reasonable to conclude that a pilot with multiple alcohol- or drug-related motor vehicle convictions has shown an inability or unwillingness to comply with regulations or laws. In addition, pilots convicted of alcohol- or drug-related motor vehicle offenses may not meet the medical standards contained in Part 67 of the Federal Aviation Regulations. The FAA has determined that information related to any conviction is necessary to conduct effective investigations to ensure that a pilot is capable of safely exercising the privileges of a flight crewmember.

On June 22, 1987, the Secretary of Transportation submitted a draft bill to Congress proposing amendments to the NDR Act to assist the FAA in identifying operators of aircraft who have motor vehicle driving problems by permitting access to the NDR. An amended version of the proposed bill was passed by the Senate on December 17, 1987 and passed by the House on December 18, 1987. The legislation amending the National Driver Register Act of 1982 (Pub. L. No. 100–223 adding section 206(b)(3) to the NDR Act of 1982) was signed by the President on December 30, 1987.

The amendment to the NDR Act states that

> (a)ny individual who has applied for or received an airman's certificate may request the chief driver licensing official of a State to transmit information regarding the individual * * * to the Administrator of the Federal Aviation Administration. The Administrator of the Federal Aviation Administration may receive such information and shall make such information available to the individual for review and written comment. The Administrator shall not otherwise divulge or use such information, except to verify information required to be reported to the Administrator by an airman applying for an airman medical certificate and to evaluate whether the airman meets the minimum standards as prescribed by the Administrator to be issued an airman medical certificate. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than 3 years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request. (23 U.S.C. 401 note)

On October 29, 1987, the FAA published a notice in the **Federal Register** (52 FR 41557) of a special enforcement policy regarding applicants for a medical certificate who have provided incorrect information about traffic convictions on a medical application form. In order to encourage compliance with the reporting requirement on the medical certificate application form, and to ensure that the FAA's records are accurate and complete, the FAA afforded airmen an opportunity to avoid FAA enforcement action based on falsification of their medical certificate applications if they volunteered the corrected information to the FAA before January 1, 1988. As of January 1, 1988, the FAA may take enforcement action, based on falsification of the medical certificate application, against those persons identified, and referred, by the OIG and those persons discovered through the FAA's investigative process before the airman disclosed the true and accurate information to the FAA. On November 1, 1988, the FAA published a notice announcing termination of this so-called "amnesty" policy, effective December 1, 1988 (53 FR 44166). The FAA currently is evaluating information received from the OIG, information received from airmen supplying corrected information regarding traffic convictions to the FAA, and information obtained as a result of FAA investigations. Evaluation of this information will enable the FAA to determine appropriate action, including enforcement action where warranted, to be taken in light of that information.

Discussion of the Proposed Rules

The FAA has had regulations addressing the issues of alcohol and drug use by an aircraft crewmember for many years. Section 91.11 of the FAR provides for certificate action against a person who acted, or attempted to act, as a crewmember of a civil aircraft within 8 hours after consumption of an alcoholic beverage; while under the influence of alcohol; while using any drug that affects the persons faculties in any way contrary to safety; or while having 0.04 percent by weight or more alcohol in the blood. Moreover, the FAA's strong interest in ensuring that individuals are not troubled by alcoholism or drug dependency is demonstrated by the long history of medical standards contained in Part 67. The proposals in this notice are intended to supplement, not replace, the current regulations. The proposed rules would implement measures to further ensure aviation safety by identifying those persons who may commit unsafe acts in an aircraft because they may disregard general safety regulations and those persons who have failed to report violations of general safety regulations to the FAA as required.

Proposed Amendments to Part 61

For the purposes of the proposed amendments to Part 61, the FAA has included a definition in § 61.15 that defines the term "motor vehicle action." The proposed definition describes events related to operation of a motor vehicle while intoxicated, while impaired, or while under the influence of alcohol or drugs. The list of events is intended to encompass the various types of alcohol- and drug-related motor vehicle offenses and administrative actions contained in state statutes.

As used in the NPRM, the term "conviction" is intended to mean that a court has entered a judgment of conviction for an alcohol- or drug-related motor vehicle offense. The FAA believes that this use of the term should apply notwithstanding the fact that an individual may appeal a conviction. If a pilot is acquitted of the charges or a pilot's conviction is reversed on appeal, the FAA would take appropriate action consistent with the reversal of the conviction.

However, this construction of the term "conviction" would not capture the situation where a court asserts or retains continuing jurisdiction over a person for an alcohol- or drug-related motor vehicle offense but the court does

not enter a judgment of conviction and a state has not taken administrative action for cause. In many states, a court has discretion to use a procedure known as "probation before judgment" or "deferred adjudication" in certain circumstances. Under this procedure, a person may be required to participate in a court-ordered rehabilitation or community service program under the supervision of the court as a condition of probation and in lieu of conviction for the substantive offense. This procedure enables an individual to avoid a permanent record of conviction; however, this procedure is not a formal acquittal of the substantive offense and rests upon a finding that the individual has operated a motor vehicle while intoxicated, while impaired, or while under the influence of alcohol or drugs. The FAA specifically requests comment on whether this situation should be treated in the same manner as a conviction for purposes of a final rule.

The FAA intended to include all types of action taken by a state, from administrative action to criminal conviction, within the proposed definition of a motor vehicle action. For example, many states have statutory implied consent provisions that result in automatic or mandatory cancellation, suspension or revocation of a driver's license regardless of whether an individual is convicted of an alcohol- or drug-related motor vehicle offense. A state's motor vehicle code also could provide for denial of an application for a driver's license for actions not supported by a conviction.

Under most state statutes, an individual's refusal to submit to a test to determine blood alcohol content, when requested by a law enforcement officer, automatically results in an "administrative" suspension or revocation of a driver's license by operation of state law. It is possible that an individual may "surrender" his or her driver's license, pursuant to a state's administrative suspension or revocation mechanism, to avoid a criminal conviction for an alcohol- or drug-related motor vehicle offense. The proposed amendment to § 61.15 is intended to address this situation by providing for certificate action in cases where there is no underlying criminal conviction for alcohol- or drug-related operation of a motor vehicle but a state has imposed an administrative sanction against a pilot's license to operate a motor vehicle on the basis of similar conduct or a related violation.

Pursuant to proposed § 61.15, the FAA's denial of an application and suspension or revocation of an existing certificate would be based on two or more alcohol- or drug-related motor vehicle convictions, two or more administrative actions by a state for cause, or at least one conviction and at least one administrative action, occurring within a 3-year period. Under the proposed rule, at least one of the convictions or administrative actions would have to occur after the effective date of the rule.

The proposed amendment also would require that a pilot report each alcohol- or drug-related motor vehicle conviction or administrative action in the pilot's recent past to the Airmen Certification Branch in Oklahoma City, Oklahoma. Any conviction or administrative action that occurred within the 3-year period before the effective date of the rule would have to be reported to the FAA not later than 60 days after the effective date. Any conviction or administrative action that occurs after the effective date of the rule would have to be reported not later than 60 days after the date of the conviction or the administrative action. Failure to report even one of these convictions or administrative actions to the FAA would be grounds for denial of an application and grounds for suspension or revocation of a pilot certificate issued under Part 61.

The proposed rule would require that the pilot report certain identifying information to the FAA. For example, the pilot would be required to include the following information: name; address; date of birth; pilot certificate number; the type of violation that resulted in the conviction or the administrative action; and the state which holds the record of conviction or administrative action. Thus, the FAA would have adequate information to locate and to obtain a copy of a conviction or record of administrative action and sufficient information with which to exercise its discretion to initiate appropriate certificate action.

A pilot would be required to report an alcohol- or drug-related motor vehicle conviction to the FAA within the proposed timeframes unless the pilot is acquitted of the charges or a conviction is reversed on appeal before those time periods elapse. A pilot would be required to report any continuing state administrative sanction affecting the pilot's license to operate a motor vehicle within the proposed timeframes if the administrative sanction is effective despite the fact that the pilot has been acquitted of a substantive offense, a conviction has been reversed on appeal, or a court has not entered a judgment of conviction based on deferred adjudication or probation before judgment.

The reporting requirement proposed in this notice is unrelated to the existing requirement that a pilot describe any past or current record of traffic convictions or record of other convictions on an application for a medical certificate. The reporting requirement proposed in this NPRM is not intended to affect or to change in any manner the requirement to fully and completely answer all questions relating to traffic and other convictions on an application for a medical certificate. Under the provisions of section 602(b)(1) of the Federal Aviation Act of 1958, the Administrator issues an airman certificate if, after investigation, the Administrator finds that the applicant "* * * possesses proper qualifications for, and is physically able to perform duties pertaining to, the position for which the airman certificate is sought * * *." Pursuant to the Act, the FAA requires airmen to undergo physical examinations periodically. An airman is examined by an FAA-designated Aviation Medical Examiner (AME) who initially determines if the airman meets the medical qualifications contained in Part 67 of the Federal Aviation Regulations for a medical certificate. An airman is required to report excessive drinking habits, drug or narcotic habits, as well as traffic and other convictions on the application for the medical certificate. This information is considered by the AME along with other information regarding the airman's medical history. The AME uses this information, combined with a physical examination, to determine if the airman meets the medical standards of Part 67 and is qualified to hold a medical certificate.

The FAA is concerned that even a single alcohol- or drug-related motor vehicle conviction or administrative action may reflect adversely on a pilot's fitness to operate an aircraft. Any impairment of a pilot's medical fitness to operate an aircraft raises important safety concerns within the jurisdiction of the FAA. In light of the FAA's statutory mandate and the adverse effects of alcohol and drug use on aircraft operators, the FAA believes that a single alcohol- or drug-related motor vehicle conviction or related administrative action is of sufficient relevance to a pilot's continued medical fitness to trigger a medical examination of the pilot.

In the FAA's opinion, it is in the public interest to medically examine a pilot within a reasonable period of time after the motor vehicle incident.

Accordingly, the FAA proposes to revise § 61.23 of the Federal Aviation Regulations to amend the duration of a medical certificate held by pilots. The proposed amendment to § 61.23 provides that a medical certificate automatically expires on the 61st day after the pilot is convicted of, or a state has taken administrative action based on, a motor vehicle action, unless the medical certificate would otherwise expire before the 61st day, so that the pilot would be medically examined in accordance with the standards contained in Part 67.

Although the FAA believes that examination of a pilot following a single alcohol- or drug-related motor vehicle incident is appropriate, the FAA is not proposing that a pilot automatically be prohibited from operating an aircraft and immediately be examined by an AME. If the pilot otherwise meets the medical standards contained in Part 67, the pilot may continue to exercise the privileges of his or her pilot certificate before the automatic expiration of the pilot's medical certificate. The FAA believes that the proposed examination within a 60-day period is a reasonable amount of time in which to schedule and complete a medical examination without an adverse impact on aviation safety and with minimum disruption to the pilot.

Consistent with the FAA's current procedures, an applicant for a medical certificate is required to list any traffic convictions and any other convictions, including alcohol- or drug-related traffic convictions, on the application for a medical certificate. At the time of application for a new medical certificate, each applicant who has been the subject of a motor vehicle action also would be required to present documents that substantiate any alcohol or substance abuse treatment plan in which the pilot participated and documents that show evidence of compliance with any court-ordered program related to the conviction or the administrative action. A pilot would receive a new medical certificate if, in light of the information on the application for a medical certificate and any new information submitted by the pilot, the pilot continues to meet the medical qualifications of Part 67 and otherwise is eligible to hold a medical certificate.

Not every state court or state administrative agency requires participation in an alcohol or substance abuse treatment program or a court-ordered program after conviction or administrative action based on alcohol- or drug-related motor vehicle offenses. Thus, the proposed rule provides that a pilot would be required only to submit this information, if applicable, to the AME at the medical examination. If the pilot was not required to participate in a treatment program or a court-ordered program as a result of the motor vehicle action, the pilot would still be required to report a motor vehicle conviction on an application for a new medical certificate and to report a motor vehicle action to the FAA pursuant to the proposed amendment to § 61.15.

Proposed Amendment to Part 67

The legislation enacted by Congress gives the FAA the authority to receive information about an individual reported by states and contained in the NDR. The legislation provides that the FAA can receive NDR information if an individual who has applied for, or received, an airman certificate requests the chief driver licensing official of a state to transmit this information to the FAA. To implement this authority, the FAA proposes to add an express consent provision to the medical certification regulations of Part 67. The proposed consent provision would enable the FAA to obtain information that independently verifies the traffic conviction information provided on a medical certificate application and to determine if an applicant for a medical certificate, or a person who currently holds a medical certificate, meets the medical standards contained in Part 67.

The proposed consent provision would require that an applicant for a medical certificate execute a consent form at the time of application that authorizes the FAA to receive NDR information. The FAA considers the express consent requirement to be integral to the application for a medical certificate. Therefore, an applicant's failure to comply with this requirement, at the time of application, would mean that the application for a medical certificate is incomplete. The FAA would be unable to process the incomplete application and to issue a medical certificate to the applicant.

The FAA is prohibited by the legislation from releasing NDR information to any person except the individual who is the subject of the NDR report. In addition, if the FAA receives information from the NDR about a particular individual, the FAA is required to make this information available to the individual for review and written comment. The FAA intends to place any information received from the NDR in the airman's medical file. Therefore, NDR information would be accorded comprehensive privacy protection and would be released only to the airman.

The legislation denies the FAA access to information in the NDR that was entered more than 3 years before the date that the FAA requests the information. However, the FAA can receive NDR data that is more than 3 years old if that information relates to the current suspension or revocation of an airman's license to operate a motor vehicle.

State participation in the NDR system is voluntary. Currently, all states participate in the NDR in some manner. Participating states report a wide variety of driver's license information to the NDR. This information includes the denial of an application for a driver's license by a state for cause; the cancellation, suspension or revocation of a driver's license by a state for cause; and a state conviction for certain motor vehicle related offenses, including the operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance. A report from the NDR contains basic descriptive data about an individual, the current status of an individual's license to operate a motor vehicle, and an indication of a state that may hold records regarding criminal, civil, or administrative action taken against an airman's license to operate a motor vehicle. As a result of amendments to the NDR Act in 1982, an NDR report will not describe the substantive offense that forms the basis for the state's license action.

The amendment to the NDR Act states that the FAA may use NDR information "to verify information required to be reported to the Administrator by an airman applying for an airman medical certificate and to evaluate whether [an] airman meets the minimum standards as prescribed by the Administrator to be issued an airman medical certificate." Due to the limited information contained in an NDR report, the FAA would use information reported by the NDR as an investigative tool.

The FAA intends to seek information from any state, identified in an NDR report, that may hold a record of traffic convictions, or a record of administrative actions by a state driver licensing agency, related to an airman's license to operate a motor vehicle. The FAA also intends to obtain a copy of any record that contains substantive information about traffic convictions and state motor vehicle administrative actions. An examination of the state records would enable the FAA to determine the nature of the underlying offense, if it is not described in the NDR report, and to confirm that the report

accurately describes any action taken by a state against an airman's license to operate a motor vehicle. In addition, the state records would enable the FAA to verify that the NDR report correctly identifies a particular airman whose name may appear in the NDR database.

The language of the legislation does not prohibit the FAA's intended use of the NDR as an investigative tool. In general, information contained in state records and reported to the NDR is a matter of public record at the state level. Therefore, in addition to the express statutory authority to receive and use NDR data, the FAA's investigative use of NDR data and use of state traffic or criminal records complies with the restrictions contained in the legislative amendments and with the requirements of the Federal Privacy Act.

The FAA believes that the proposed rules would improve the level of aviation safety by providing a mechanism to identify and take enforcement action against those individuals who exhibit a lack of compliance disposition. Also, the proposed rules would enable the FAA to investigate false statements, which may be intended to conceal a pilot's failure to meet the medical standards (including alcoholism or drug dependency), made by an individual on a medical certificate application.

Regulatory Evaluation

This is a summary of the preliminary cost impact and benefit evaluation for the regulatory changes proposed in this notice. The proposed changes would establish a basis for revocation or suspension of pilot certification for pilots convicted of alcohol- or drug-related motor vehicle offenses or pilots subject to state administrative action for cause. The proposals would require that a pilot report any conviction or administrative action that occurred within the 3-year period before the effective date of the rule, and each conviction or administrative action that occurs after the effective date of the rule, to the FAA Airmen Certification Branch in Oklahoma City. Under the proposed amendment, a pilot's failure to report even one conviction or administrative action to the FAA would be grounds for denial of an application and grounds for suspension or revocation of a certificate issued under Part 61. The proposed reporting requirement is in addition to the existing obligation on a pilot to describe any past record of traffic convictions and any past record of other convictions on an application for a medical certificate.

The proposed changes also would provide that a pilot's medical certificate would expire on the 61st day after conviction of an alcohol- or drug-related motor vehicle offense or after imposition of a state administrative sanction unless the medical certificate would otherwise expire before the 61st day. The proposals would require that a pilot submit certain information regarding a pilot's participation in an alcohol or substance abuse treatment plan or court-ordered program to an AME at the time of an examination associated with an application for a medical certificate that follows a motor vehicle action.

The proposal to amend § 61.15 of the Federal Aviation Regulations (FAR) would affect an estimated 752,000 individuals currently holding pilot certificates and ratings issued by the FAA. Implementation of these proposals is likely to result in the revocation or suspension of the privilege to operate an aircraft for a substantial number of pilots convicted of alcohol- or drug-related motor vehicle offenses or pilots subject to state administrative action for cause. This number could range from 1,000 to 12,000 pilots per year. The costs of suspension or revocation of a certificate issued under Part 61 would be the negative economic impact associated with the temporary or permanent loss of employment for pilots engaged in commercial aviation and the deprivation of leisure and business flying for general aviation pilots. These costs are considered to be the result of alcohol or drug use rather than regulatory costs and, therefore, should not be attributed to FAA's efforts to improve aviation safety by removing from an increasingly congested airspace individuals who have demonstrated an unwillingness or inability to comply with safety regulations.

The costs associated with the administration and enforcement of the proposed rules are considered nominal and unquantifiable. The FAA anticipates that these activities could be incorporated into the agency's existing workload; however, additional agency resources may be required to process the data from the NDR and material submitted by pilots at a medical examination by an AME in accordance with the proposals.

The proposal to amend § 61.23 would provide for termination of a pilot's medical certificate following a motor vehicle action. Pilots whose medical certificates expire as a result of the proposed amendment would be required to apply for a new medical certificate. Pilots whose medical certificates have expired and pilots who are examined before their medical certificates expire would be required to submit documents, if any, substantiating the pilot's participation in any alcohol or substance abuse treatment program and to show evidence of compliance with any court-ordered program. For the purposes of the regulatory evaluation, the FAA assumed that, statistically, the average duration of an airman medical certificate that expires pursuant to the proposed amendment would be reduced by 50 percent. The expirations would range from recently-issued medical certificates to those nearing expiration under the current sections in § 61.23. The FAA estimates that the incremental cost to affected pilots to obtain a new medical certificate in compliance with the proposed rule would be approximately $294,800 per year or approximately $1.8 million discounted over a 10-year period.

The FAA expects that the proposed rules would reduce the number of aviation accidents caused by pilots who may be impaired by alcohol or drugs during aircraft operations. However, the FAA has been unable to quantify the expected benefits of the proposed rules. Some observations can be made, however, regarding potential benefits of the proposed rules. As previously stated, during the period from 1978 to 1987, 6.0 percent of general aviation pilots killed in aviation accidents had a blood alcohol level of at least 0.04 percent. During the 10-year period from 1978 to 1987, 11,329 people died in general aviation accidents. If 6.0 percent of these people died in accidents where the pilot was under the influence or impaired by alcohol, an average of 68 people died annually where alcohol may have been a contributing factor in the accident. The FAA believes that potential drug involvement in aviation accidents would increase the average number of people killed in aviation accidents where impairment may have been a contributing factor. Consequently, if the proposed changes to the Federal Aviation Regulations are only 1 percent effective, the benefits expected as a result of reduced aviation accidents would more than equal the $1.8 million discounted, 10-year cost of the proposals, based on the generally-accepted, statistical value of $1 million per human life.

Regulatory Flexibility Determination

The FAA has determined, pursuant to the Regulatory Flexibility Act of 1980, that the proposed rules would not have a significant economic impact, positive or negative, on a substantial number of small entities. This determination is based on the FAA's opinion that the adverse economic consequences associated with the loss of the privilege

to operate an aircraft for both commercial and general aviation pilots convicted of alcohol- or drug-related motor vehicle offenses or pilots affected by state administrative action for cause are the direct consequence of alcohol or drug use.

Trade Impact Statement

These proposals, if adopted, would affect only those individuals who hold an FAA-issued certificate and, therefore, would have no impact on trade opportunities for U.S. firms doing business overseas or foreign firms doing business in the United States.

Paperwork Reduction Act Approval

Proposed § 61.15(e) would require a pilot to report to the FAA each alcohol- or drug-related motor vehicle conviction and each alcohol- or drug-related administrative action. Proposed § 61.23(d) would require a pilot to submit certain documents to an AME at the time of examination for application for a medical certificate following a motor vehicle action. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the recordkeeping and reporting provisions contained in this NPRM have been submitted for approval to the Office of Management and Budget (OMB). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, DC 20503; Attention: FAA Desk Officer; telephone (202) 395–7340. A copy also should be submitted to the FAA docket.

Federalism Implications

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

Conclusion

The costs associated with the proposed rules are the cost of reporting convictions and administrative actions to the FAA and a small cost resulting from expiration of a medical certificate requiring a medical examination of a pilot. Based on estimates of these costs, the FAA has determined that the proposed amendments would impose only a nominal cost on the aviation community and that the estimated benefits are expected to exceed the estimated costs of implementation. For these reasons, it is certified that, under the criteria of the Regulatory Flexibility Act, the proposed amendments, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities. For the same reasons, the proposals do not involve a major rule under the criteria of Executive Order 12291. Because the proposals involve issues of substantial interest to the public, the proposals are considered to be significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). An initial regulatory evaluation for this rulemaking action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption entitled **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 61

Aircraft pilots, Airmen, Air safety, Alcohol and alcoholic beverages, Aviation safety, Drugs, Pilots, Safety, Transportation.

14 CFR Part 67

Airmen, Aviation safety, Medical records.

The Proposed Amendments

In consideration of the foregoing, the FAA proposes to amend Part 61 and Part 67 of the Federal Aviation Regulations (14 CFR Parts 61 and 67) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for Part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 61.15 by adding new paragraphs (c), (d), and (e) to read as follows:

§ 61.15 Offenses involving alcohol or drugs.

* * * * *

(c) For the purposes of paragraphs (d) and (e) of this section, a motor vehicle action means—

(1) A conviction for the violation of any Federal or state statute relating to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug;

(2) The cancellation, suspension, or revocation of a license to operate a motor vehicle by a state for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug; or

(3) The denial of an application for a license to operate a motor vehicle by a state for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug.

(d) A motor vehicle action occurring after [the effective date of the final rule] and within 3 years of a previous motor vehicle action is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of the last motor vehicle action; or

(2) Suspension or revocation of any certificate or rating issued under this part.

(e) Each person holding a certificate issued under this part shall provide a written report of each motor vehicle action that occurs after [3 years before the effective date of the final rule] not later than [60 days after the effective date of the final rule] or not later than 60 days after the motor vehicle action, whichever is later. The report must include the person's name; address; date of birth; pilot certificate number; the type of violation that resulted in the conviction or the administrative action; and the state which holds the record of conviction or administrative action. Each person shall forward the report to the FAA, Airmen Certification Branch (AAC–260), P.O. Box 25082, Oklahoma City, OK 73125. Failure to comply with this section is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of the failure to report a motor vehicle action; or

(2) Suspension or revocation of any certificate or rating issued under this part.

3. By amending § 61.23 by adding new paragraph (d) to read as follows:

§ 61.23 Duration of medical certificates.

* * * * *

(d) Each airman medical certificate, issued to a person who holds a certificate issued under this part, expires in accordance with paragraphs (a), (b), or (c) of this section or on the 61st day after a motor vehicle action as defined in § 61.15(c) of this Part, whichever is earlier. At the time of any application

for an airman medical certificate, each applicant holding a certificate issued under this part, who is the subject of a motor vehicle action occurring after the applicant's last medical examination and after (the effective date of the final rule) shall present to the aviation medical examiner—

(1) Documents that substantiate the applicant's participation in an alcohol or substance abuse treatment program, if any; and

(2) Evidence that the applicant is in compliance with a court-ordered program resulting from the motor vehicle action, if any.

PART 67—MEDICAL STANDARDS AND CERTIFICATION

4. The authority citation for Part 67 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, and 1422; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

5. By adding new § 67.3 to read as follows:

§ 67.3 Access to the National Driver Register.

At the time of application for a certificate issued under this part, each person who applies for or receives a medical certificate shall execute an express consent form requesting the chief driver licensing official of a state to transmit information contained in the National Driver Register about the person to the Administrator. The Administrator shall make information received from the National Driver Register, if any, available to the person for review and written comment.

Issued in Washington, DC, on May 11, 1989.

Monte R. Belger,

Associate Administrator for Aviation Standards.

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