5-19-89
Vol. 54 No. 96

federal register

Friday
May 19, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

5-19-89
Vol. 54 No. 96
Pages 21587-21930

federal register

Friday
May 19, 1989

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WHO: The Office of the Federal Register.

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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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Presidential Documents

Title 3—

The President

Proclamation 5980 of May 16, 1989

National Defense Transportation Day and National Transportation Week, 1989

By the President of the United States of America

A Proclamation

Americans are the most mobile people in the world, and we are understandably proud of our transportation system. It is one of our greatest achievements and most valued assets, conveying each of us and virtually every item of our commerce.

The steaming piston, the whirring turbine, and the spinning wheel of the high-speed train are familiar symbols of this indispensible support of our daily activities. New symbols join the list every year, such as the "pillar of fire" of the space shuttle or the promise of the magnetic levitation train. From covered wagons and the Erie Canal to jumbo jets and superhighways, the network of roads, air routes, and waterways that constitute America's transportation system has increased our productivity, spurred our economic growth, and logistically strengthened our national defense. Our transportation system provides the arteries we need to work with America's allies in ensuring our common security and enables us to deploy and supply our forces overseas.

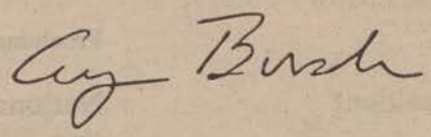
With the growth of our transportation needs have come new demands and challenges, but the transportation industry has continued working to meet them, promoting the development of a more reliable, convenient, and efficient transportation system.

There has also been a growing awareness of the need for transportation safety. Americans are working together to eliminate the menace of drunk and drugged driving; communities are promoting education programs and more stringent laws designed to improve transportation safety; and judges are getting tougher when dealing with offenders. The Government and private sector are united in these efforts to reduce fatalities and accident rates to the lowest levels in history. We owe a tremendous debt of gratitude to the men and women who dedicate themselves to saving lives and preventing injuries.

In recognition of the importance of transportation and of the millions of Americans who serve and supply our transportation needs, the Congress, by joint resolution approved May 16, 1957, has requested that the third Friday in May of each year be designated as "National Defense Transportation Day," and by joint resolution approved May 14, 1962, that the week in which that Friday falls be proclaimed "National Transportation Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate Friday, May 19, 1989, as National Defense Transportation Day and the week beginning May 14, 1989, as National Transportation Week. I urge all our people to observe these occasions with appropriate ceremonies that will give full recognition to the citizens and organizations who maintain our great modern transportation system and with it all its many benefits for domestic life and the national defense.

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



[FR Doc. 89-12272
Filed 5-17-89; 4:50 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5981 of May 17, 1989

National Osteoporosis Prevention Week, 1989 and 1990

By the President of the United States of America

A Proclamation

Each year, more and more Americans become familiar with the medical term "osteoporosis." Osteoporosis, or porous bone, is actually a common disease that afflicts approximately 25 million Americans. It is often called the "silent disease" because it develops over many years without symptoms. This silent disease is the leading cause of bone fractures in postmenopausal women in particular, and in elderly persons in general. In fact, osteoporosis causes more than 1.3 million fractures of the spine, wrist, and hips each year.

The impact on individuals and society in terms of physical, emotional, and financial suffering is enormous. Osteoporosis and osteoporotic fractures cost the Nation an estimated $10 billion annually. Fortunately, we now know that fractures caused by osteoporosis may be preventable.

To reduce the risks of developing osteoporosis, we must begin a healthy regimen early in life. It is important to build the maximum amount of bone mass possible during childhood and adolescence and to keep our bones strong during adulthood. In our later years, it is particularly important to prevent the falls and accidents that can lead to bone fractures.

Research has shown that, before an individual is 35 years old, moderate exercise and proper nutrition—including an adequate intake of calcium—may help to build bone mass. Other investigations have indicated that, for postmenopausal women, estrogen replacement therapy, a sufficient supply of calcium, and regular weight-bearing exercise all help to curb the rate of bone loss.

New scientific, medical, and educational approaches to the prevention and treatment of osteoporosis will help to improve the health of all Americans. As individuals, each of us can protect ourselves and our children from this potentially debilitating disease by maintaining a healthy diet and regular exercise program.

The Congress, by Senate Joint Resolution 37, has designated the week beginning May 14, 1989, and the week beginning May 13, 1990, as "National Osteoporosis Prevention Week" and has authorized and requested the President to issue a proclamation in observance of these events.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of May 14 through May 20, 1989, and the week of May 13 through May 19, 1990, as "National Osteoporosis Prevention Week." I urge the people of the United States, as well as educational, scientific, medical, health care, and community service organizations to observe these weeks with appropriate programs, ceremonies, and activities.

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

George Bush

[FR Doc. 89-12273
Filed 5-17-89; 4:51 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5982 of May 17, 1989

High School Reserve Officer Training Corps Recognition Day, 1989

By the President of the United States of America

A Proclamation

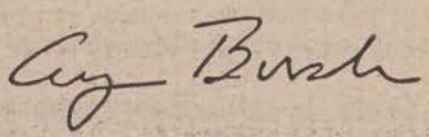
Since it was established in 1916, the Junior Reserve Officer Training Corps (Junior ROTC) has assisted in shaping the character and moral values of hundreds of thousands of high school students throughout the country. Participation in the High School Reserve Officer Training Corps has helped four generations of American young people to grow in self-discipline and responsibility, as well as awareness of the duties of citizenship in a democratic society.

With its emphasis on leadership, teamwork, individual initiative, civic pride, and respect for the United States, this program contributes substantially to the strength of our country and to the personal development of the high school students who participate.

To encourage the American people to learn more about the benefits of Junior ROTC and its many contributions to the Nation, the Congress, by Senate Joint Resolution 58, has designated May 17, 1989, the seventy-third anniversary of the ROTC program's creation, as "High School Reserve Officer Training Corps Recognition Day," and has authorized and requested the President to issue a proclamation calling upon the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 17, 1989, as High School Reserve Officer Training Corps Recognition Day. I call upon all Americans to participate in appropriate ceremonies and events and become actively involved with their local high school ROTC programs.

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



[FR Doc. 89-12288
Filed 5-18-89; 10:26 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5983 of May 17, 1989

Armed Forces Day

By the President of the United States of America

A Proclamation

During the past 40 years, we Americans have set aside a special day each year to recognize our debt to the men and women who defend this Nation's peace and security as members of the Armed Forces. On Armed Forces Day, we honor the men and women who serve in our Army, Navy, Air Force, Marine Corps, and Coast Guard.

A nation's military strength is not found in its defensive systems and weapons alone, or even in the number of its military personnel. It is the personal character of the men and women in uniform—their faith, readiness, will, and devotion—that makes a nation's armed forces proud and strong. As Patrick Henry observed when urging his fellow Americans to fight for our country's independence: "The battle . . . is not to the strong alone; it is to the vigilant, the active, the brave."

Patrick Henry's observation accents the theme for this 40th anniversary observance of Armed Forces Day: "Keeping America Strong." Our Nation is strong today because the members of our Armed Forces are vigilant, active, and brave. America's service men and women are mindful of the precious nature of freedom and peace and of our responsibility to preserve them for generations yet unborn; they are prepared to defend innocent people from the aggression of terrorists and totalitarian governments; and they are both courageous in danger and confident in "the holy cause of liberty."

The members of America's Armed Forces are part of the noble legions that have never failed to defend our Nation or her interests anywhere in the world. As our recent experience in Grenada and the Persian Gulf so forcefully reminded us, securing peace and advancing the cause of liberty require such constant strength and determination.

Today, I join with all Americans in thanking the members of the United States Armed Forces for so faithfully defending our freedom and national security. From the newest enlisted personnel to the most seasoned Generals and Admirals—Navy crewmen in the boiler room and on the bridge, Coast Guard crews at sea and stateside, Air Force personnel on the lonely tarmac or in the busy control tower, Marines and Army soldiers from boot camp to command post—you are America's heroes as surely as the brave and selfless veterans who have gone before you.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America and Commander in Chief of the Armed Forces of the United States, continuing the precedent of my eight immediate predecessors in this Office, do hereby proclaim the third Saturday of each May as Armed Forces Day.

I direct the Secretary of Defense on behalf of the Army, the Navy, the Air Force, and the Marine Corps, and the Secretary of Transportation on behalf of the Coast Guard to plan for appropriate observances each year. The Secretary of Defense shall also be responsible for soliciting the participation and cooperation of civil authorities and private citizens.

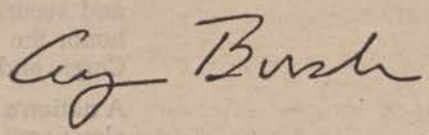
I invite the Governors of the States, the Commonwealth of Puerto Rico, and other areas subject to the jurisdiction of the United States to provide for the

observance of Armed Forces Day within their jurisdiction each year in an appropriate manner designed to increase public understanding ands appreciation of the Armed Forces of the United States. I also invite national and local veterans, civic, and community service organizations to join in the annual observance of Armed Forces Day.

Finally, I call upon all Americans not only to display the flag of the United States at their homes on Armed Forces Day, but also to learn about national defense—and the men and women who sustain it—by participating in the local observances of the day.

Proclamation 4934 of April 16, 1982, is hereby superseded.

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



[FR Doc. 89-12289
Filed 5-18-89; 10:27 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 96
Friday, May 19, 1989

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 666]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 666 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 385,000 cartons during the period May 21 through May 27, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 666 (§ 910.966) is effective for the period May 21 through May 27, 1989.

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

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

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

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

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

This regulation is consistent with the California-Arizona lemon marketing policy for 1988-89. The Committee met publicly on May 16, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is strong.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.966 is added to read as follows:

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

§ 910.966 Lemon Regulation 666.

The quantity of lemons grown in California and Arizona which may be handled during the period May 21, 1989, through May 27, 1989, is established at 385,000 cartons.

Dated: May 17, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-12224 Filed 5-18-89; 8:45 am]
BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563f

[No. 89-1429]

Management Official Interlocks

Date: May 11, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance

Corporation, is amending its regulations on management official interlocks by delegating to the Principal Supervisory Agent authority to grant or withhold approval to all applications for exemptions or extensions of time filed pursuant to 12 CFR 563f.4 and 563f.6, with the exception of those that present an issue of policy or law. This delegation will streamline the applications process and enable the Agency to respond more quickly and efficiently to applicants.

EFFECTIVE DATE: May 19, 1989.

FOR FURTHER INFORMATION CONTACT: Robyn Dennis, Financial Analyst, (202) 331–4572, Office of Regulatory Activities, 801 Seventeenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board has previously delegated significant elements of its supervisory and examination functions to the Federal Home Loan Banks ("FHLBanks"), under the direction of the Principal Supervisory Agents. By establishing the Office of Regulatory Activities (Board Resolution No. 86–755), the Board determined that its purpose of improving the effectiveness of its examination and supervisory functions would be furthered.

As part of this organizational restructuring, the Board, upon consideration of a recommendation by the Office of Regulatory Activities, has determined that delegation of routine application decisions where criteria and standards are clear and definitive and that are currently performed by the Office of Regulatory Activities can be more efficiently and effectively carried out by relying on the existing expertise at the FHLBanks. As is its practice in granting delegations of authority, the Board reserves unto itself the right to decide applications that present significant issues of law or policy or would establish a precedent of national significance.

This delegation does not diminish the statutory responsibility of the Board to, through the Office of Regulatory Activities, oversee, control, and where necessary improve the functions of examination and supervision. It will, however, expedite delivery of decisions. Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because these amendments relate to rules of Board organization, procedure, and practice, notice and public comment are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 563f

Antitrust, Holding companies, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563f, Subchapter D, Chapter V, of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563f—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority for Part 563f is revised to read as follows and the authority citations located at the end of each paragraph are removed:

Authority: Sec. 5A, 47 Stat. 725 as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 201, 92 Stat. 3672, as amended (12 U.S.C. 3201 et seq.); Reorg. Plan No. 3 of 3, 1943–1948 Comp., p. 1071.

2. Section 563f.7 is revised to read as follows:

§ 563f.7 Delegation of authority to grant exemptions and extensions of time.

The Principal Supervisory Agent or his designee may grant or withhold exemptions under § 563f.4 and extensions of time under § 563f.6, provided the exemption or extension request does not present a significant issue of law or policy and would not establish a precedent of national significance. Exemptions under any paragraph of § 563f.4 shall be granted under this delegated authority if all relevant conditions specified in that paragraph, if any, are met. Extensions under § 563f.6 shall be granted unless the Principal Supervisory Agent or his designee determines that the extension would be so contrary to the depository institutions as to outweigh the disruption caused by the earlier departure of management officials in interlocking relationships. For applications not approved, the PSA shall give the applicant prompt notice, in writing, citing the specific basis for disapproval. Applications made pursuant to this section should be submitted to the Principal Supervisory Agent of the district that has supervisory responsibility over the depository institution or depository holding company wherein the management official is, or would be, in a prohibited management interlock position.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–12022 Filed 5–18–89; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–119–AD; Amdt. 39–6222]

Airworthiness Directives; McDonnell Douglas Model DC–6, –6A, –6B, R6D, C118A (Military), and DC–7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC–6 and DC–7 series airplanes, which requires inspection and rework or replacement, if necessary, of wing center spar main landing gear fittings. This amendment is prompted by reports of stress corrosion cracking in the wing center spar main landing gear fittings. This condition, if not corrected, could lead to failure of the main landing gear.

EFFECTIVE DATE: June 23, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attn: Director of Publications, C1–L00 [54–60]. This information may be examined at the 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. William Roberts, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5228.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC–6 and DC–7 series airplanes, to require inspection and rework or replacement, if necessary, of wing center spar main landing gear fittings, was published in the **Federal Register** on November 17, 1987 (53 FR 64671).

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

The single commenter, suggested that the repetitive inspection interval of six months, proposed in paragraph A., is too frequent. This operator currently inspects this area each 2,000 hours (approximately four calendar years) and found only one cracked trunion in six years. The FAA concurs. In addition to the data submitted by the operator, the FAA has also reassessed data from the manufacturer which substantiates that the inspection interval can be increased without compromising safety. Paragraph A. of the final rule has been revised to increase the inspection interval to 500 hours or one year, whichever occurs first.

In reference to the proposed requirement to apply LPS–3 corrosion inhibiting oil to each fitting, this commenter stated that after LPS–3 sets up and forms the protective coating, it is difficult to remove it for reinspection. In reviewing data on the ability to remove LPS–3, the FAA found that it was not clear that cleaning the part will always allow dye penetrant inspection. Thus, a procedure is preferred wherein cleaning and dye penetrant is first attempted. If this approach fails, then a visual inspection is acceptable. The FAA had determined that the visual inspection is an adequate alternate inspection for detecting cracks in this particular part. FAA concurs with the comment and has revised the inspection technique following the first inspection to provide for an alternative visual inspection to accommodate possible interference of the LPS–3 when attempting to perform a dye penetrant inspection.

This commenter also suggested that inspecting reworked fittings every three months for an indefinite period is redundant and that after a certain period, these inspections should be performed at regularly scheduled inspection intervals. The FAA has determined that the potential for cracking of the trunion fitting is highest in the first year after rework. Therefore, close inspection intervals, limited to the first year following rework, establishes an acceptable level of safety. The FAA has revised the inspection intervals of paragraph B.2. of the final rule so as to require inspections at intervals not to exceed three months for an one year period, followed by inspections at intervals not to exceed 500 hours or one year, whichever occurs first.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that there are approximately 300 Model DC–6 series airplanes and 100 Model DC–7 series airplanes of the affected design in the worldwide fleet. It is estimated that 226 airplanes of U.S. registry will be affected by this AD, that it will take approximately 36 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $325,440.

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

For the reasons discussed above, 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 final evaluation has been prepared for this regulation and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–6, –6A, –6B, R6D, C–118A (Military), and DC–7 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect stress corrosion cracks and to prevent failure of the wing center spar main landing gear fittings, accomplish the following:

A. Within one month after the effective date of this AD, unless already accomplished within the last five months, and thereafter at intervals not to exceed 500 hours time-in-service or one year, whichever occurs first, perform a dye penetrant inspection of the wing center spar main landing gear fittings around the bore and up to the wing lower skin, paying particular attention to the milled pocket in the outboard fitting, in accordance with Douglas Rework Drawing SR 06578001, "NC." After each inspection, apply LPS–3 corrosion inhibiting oil or equivalent to each fitting. After the first dye penetrant inspection, later inspections may be accomplished by using the following procedure:

1. Clean the LPS–3 using the best available cleanser,

2. Conduct a dye penetrant inspection, and, if unsuccessful,

3. Conduct a visual inspection.

B. If a crack is found as a result of the inspection required by paragraph A., above, prior to further flight, accomplish the following:

1. If a crack is found inside the recessed pocket areas, perform an eddy current inspection to determine if the crack extends above or below the recessed pocket areas.

2. If cracks are found inside the recessed pocket areas which are within the limits shown on McDonnell Douglas Rework Drawing SR 06578001, "NC," dated July 25, 1988, accomplish the trimout rework in accordance with that drawing. For a period of one year thereafter, conduct inspections in accordance with paragraph A. at intervals not to exceed three months. Thereafter, conduct inspections at intervals not to exceed 500 hours time-in-service or one year, whichever occurs first.

3. If cracks are found in the main landing gear cylinder bore or cracks are found which extend beyond the rework limits shown on McDonnell Douglas Rework Drawing SR 06578001, "NC," dated July 25, 1988, replace the fitting(s) with airworthy parts prior to further flight. If cracked fittings are replaced with new fittings made from 7075–T6 forging material, inspect the fittings in accordance with paragraph A., above, within 60 months after installation and thereafter at intervals not to exceed 12 months.

C. Installation of new fittings made of 7050–T7452 hand forging material constitutes terminating action for the inspections required by this AD.

D. 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, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base to comply with the repair requirement of this AD when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective June 23, 1989.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89–12061 Filed 5–18–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–147–AD; Amdt. 39–6220]

Airworthiness Directives, Fokker Model F–28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Fokker Model F–28 series airplanes, which requires repetitive inspections of the lower windshield center bracket for cracks and repair, if necessary. This amendment is prompted by reports of cracks found during major structural inspection on three airplanes. This condition, if not corrected, could lead to decompression of the airplane during flight.

EFFECTIVE DATE: June 22, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. 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, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Fokker Model F–28 series airplanes, which requires repetitive inspections of the lower windshield center bracket for cracks and repair, if necessary, was published in the **Federal Register** on December 5, 1988 (53 FR 48929).

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

The commenter considered the issuance of the proposed rule to be unnecessary since this proposed inspection, in time, will become a part of the Fokker Structural Integrity Program (SIP) Document 28438, Part I. The FAA does not concur. Although Part I of the SIP Document, Revision 6, dated March 20, 1986, has been made mandatory by the recent issuance of AD 89–07–16, Amendment 39–6170 (54 FR 11940; March 23, 1989), the inspections that would be required by this AD action are not included in the revision. Therefore, the FAA has determined that this AD is necessary to require the accomplishment of the inspections of the lower windshield center brackets. As revisions to the SIP are developed by Fokker, the FAA will consider parallel revisions to AD 89–07–16; such revisions may eventually include the incorporation of the bracket inspections. However, at this time, it is appropriate that a separate AD action be taken to mandate the bracket inspections.

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

It is estimated that 48 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,840.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model F–28 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations 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 1323; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to Model F–28 series airplanes, Serial Numbers 11003 through 11241, 11991, and 11992, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent decompression of the aircraft during flight, accomplish the following:

A. For airplanes in pre-Service Bulletin F28/21–16 configuration, within 30 days after the effective date of the AD, or upon the accumulation of 75,000 landings, whichever occurs later, inspect the frame 1600 center bracket for cracks, and repair, if necessary, in accordance with Fokker Service Bulletin F28/53–A92, Revision 1, dated July 15, 1988. Repeat this inspection at intervals not to exceed 4,500 landings.

B. For airplanes in post-Service Bulletin F28/21–16 configuration, within 30 days after

the effective date of this AD, or upon the accumulation of 50,000 landings, whichever occurs later, inspect the frame 1600 center bracket for cracks, and repair, if necessary, in accordance with Fokker Service Bulletin F28/53-A92, Revision 1, dated July 15, 1988. Repeat this inspection at intervals not to exceed 3,000 landings.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 22, 1989.

Issued in Seattle, Washington, on May 8 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 89-12056 Filed 5-18-89; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to firms designated by the Securities and Investments Board ("SIB") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, 17 CFR 30.10 (1988), which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Shauna Turnbull, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Firms Designated by the Securities and Investments Board From the Application of Certain of the Foreign Futures and Option Rules the Later of Thirty Days After Publication of the Order Herein in the Federal Register or After Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to United States customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, among other things, the Commission considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission Rule 30.10, determined to permit persons located outside the United States and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Commission Rule 30.10, 52 FR 28980, 29001. These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining adequate standards of customer and market protection within the United States.

Moreover, the Commission specifically stated in adopting Commission Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to provide access to their books and records in the United States to Commission and Department of Justice representatives; and (3) notify the NFA of the commencement or

termination of business in the United States.[1]

By letter dated January 29, 1988, as supplemented by letter dated May 18, 1988, the SIB, which has been delegated the powers to authorize and regulate investment business in the United Kingdom under the Financial Services Act (Delegation) Order 1987, petitioned the Commission on behalf of certain firms which it has authorized for an exemption from the application of the Commission's foreign futures and option rules. In support of its petition, the SIB states that granting such an exemption with respect to firms which it has authorized would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory scheme comparable to that imposed by the Commodity Exchange Act ("Act") and the regulations thereunder.

Based upon a review of the petition, supporting materials filed by the SIB and the recommendation of the staff, the Commission has concluded that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with applicable United Kingdom law and SIB rules may be substituted for compliance with those sections of the Act more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;

—The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7 (1988);

—Those sections of Part 1 of the Commission's financial regulations that apply to foreign futures and options sold in the United States as set forth in Part 30; and

—Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30;

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in the United Kingdom.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons in the United Kingdom who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for authorized persons including, without limitation, a requirement that all firms immediately notify SIB if the firms' adjusted net capital falls below a specified level and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer funds which is designed to preclude the use of customer funds to satisfy house obligations and requires separate accounting for such funds, augmented by a compensation scheme designed to compensate customers whose funds are segregated and who have suffered a loss as a result of fraud and/or insolvency of an authorized person;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation;

(5) Sales practice standards for authorized firms and persons acting on their behalf which include, for example, a requirement that authorized persons know their customers, required disclosures to prospective customers and prohibitions on misleading advertising and improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities which take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) For sharing of information between the Commission and SIB [2] and the availability of related mechanisms for sharing monitoring information with the Commission on an "as needed" basis including, without limitation, confirmation data, data necessary to trade funds, position data, data on firms' standing to do business and financial condition, and for cooperating with the Commission and NFA in inquiries, compliance matters, investigations and enforcement proceedings.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission Rule 30.9, 17 CFR 30.9 (1988), or the disclosure provisions of Commission Rules 30.6, 17 CFR 30.6 (1988).[3] Moreover, the relief granted is directed to brokerage activities on or subject to the rules of recognized investment exchanges ("RIEs") in the United Kingdom [4] or any other exchange, other than a contract market designated as such pursuant to section 5 of the Act, which is a designated investment exchange under SIB Conduct of Business Rule 1.04, undertaken by firms authorized to do investment business in the United Kingdom from a location in the United Kingdom. These RIEs currently include the London

[1] 52 FR 28980, 28981 and 29002.

[2] *See, e.g.*, "Memorandum of Understanding on Exchange of Information between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and Between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures" signed on September 23, 1986, as supplemented by "Memorandum Relating to UK/US MOU" signed on November 22, 1988 adding the SIB as a signatory to the MOU (hereinafter collectively referred to as "UK/US MOU"), and the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on September 1, 1988 by, among others, the SIB, the Commission, and United Kingdom and United States self-regulatory organizations.

[3] Commission Rule 30.6 requires that customers resident in the United States who enter into foreign futures and option transactions also be furnished with the options risk disclosure statement in Commission Rule 33.7, 17 CFR 33.7 (1988). No option product traded on any RIE in the United Kingdom may be offered or sold to customers resident in the United States until the Commission issues an Order pursuant to Commission Rule 30.3(a), 17 CFR 30.3(a) (1988), approving the offer or sale in the United States of such option product. In that connection, in considering any petition requesting that United Kingdom option products subject to Part 30 be approved for offer or sale in the United States, the Commission will assess the degree to which the United Kingdom's options risk disclosure statement addresses the same matters as those set forth in the Commission's options risk disclosure statement in determining whether the United Kingdom's statement may be substituted for the language in Commission Rule 33.7.

In that connection, notwithstanding the fact that the Commission has approved the offer or sale in the United States of certain option products traded on the Singapore International Monetary Exchange, the Sydney Futures Exchange, and the Montreal Exchange, no firm exempted hereunder may offer or sell such option products to persons resident in the United States pending a resolution of the options risk disclosure issue.

[4] *See* Financial Services Act ("FSA"), section 37.

International Financial Futures Exchange, London Commodity Exchange, London Metal Exchange, Baltic Futures Exchange, and the International Petroleum Exchange of London. The relief does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading in United States markets for its own account would be subject to the Commission's large trader reporting requirements. *See, e.g.*, 17 CFR Part 18 (1988). Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers. *See, e.g.*, 17 CFR Parts 17 and 21 (1988). The relief herein is inapplicable where the firm solicits or effects transaction on United States markets for United States customers. In that case, the firm must comply with all applicable United States laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firm with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in the United Kingdom; such firm is engaged in business with customers located in the United Kingdom as well as in the United States; and, to the best of its knowledge and belief, such firm and its employees and company representatives who engage in activities subject to Part 30 would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) It will promptly notify the Commission of all material changes in the Financial Services Act and SIB rules;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than United Kingdom customers under all relevant provisions of United Kingdom law; and

(e) The procedures for sharing information, including access to firms' books and records concerning activity subject to regulation under the Part 30 rules will be governed by the UK/US MOU and the Side Letter thereto dated May 15, 1989, attached hereto as Exhibit A, and the FISMOU and the Addendum thereto dated May 15, 1989, attached hereto as Exhibit B.

(2) Each firm seeking relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act by filing a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission Rule 30.5, 17 CFR 30.5 (1988), unless a currently effective valid and binding agency agreement has previously been filed by or on behalf of such firm in connection with the interim relief granted by the Commission with respect to certain persons on January 29, 1988, 53 FR 3338 (February 5, 1988), as extended on April 4, 1988, 53 FR 11491 (April 7, 1988), and by letters dated July 5, 1988, November 2, 1988, and December 22, 1988;

(b) Acknowledges that it can be required by SIB to provide to SIB immediate access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in the United Kingdom and that SIB will cooperate in providing access to such books and records to the Commission in accordance with the terms of the Side Letter to the UK/US MOU;

(c) Consents that all futures or regulated option transactions with respect to customers resident in the United States will be made on or subject to the rules of an RIE or any other exchange, other than a contact market designated as such pursuant to section 5 of the Act, designated by the SIB under SIB Conduct of Business Rule 1.04, and will be undertaken consistent with the rules of the SIB and applicable provisions of the Financial Services Act;

(d) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission Rule 3.32, 17 CFR 3.32 (1988);

(e) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

(f) Subject to NFA's stated policy to reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange, consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30; provided, however, that the firm may require its customers resident in the United States to execute the consent attached hereto as Exhibit C concerning the exhaustion of certain mediation or conciliation procedures made available by the SIB prior to bringing an NFA arbitration proceeding; and, provided further, that the firm must undertake to provide the customer with information concerning how to commence such procedures and documentation of the commencement of such procedures pursuant to the consent attached hereto as Exhibit C;

(g) Consents to the release of financial information relating to the firm as specified in the FISMOU, as amended, between, among others, the Commission and SIB;

(h) Consents to refuse customers resident in the United States the option of not segregating funds notwithstanding relevant provisions of the United Kingdom regulatory system and otherwise consents to provide all customers resident in the United States no less stringent regulatory protection than United Kindom customers under all relevant provisions of United Kingdom law;

(i) In the event a firm is using an approved bank undertaking to meet any part of the financial resources requirement of the SIB, and the value of segregated funds held by the firm on behalf of customers resident in the United States exceeds 17.5 times the absolute minimum financial resource requirement applicable to the firm, consents to report on its quarterly financial statement to the SIB, or at such other times as may be specified by the SIB, the value of funds required to be segregated on behalf of customers resident in the United States; and

(j) Undertakes to comply with the applicable provisions of United Kingdom law and SIB rules which form the basis upon which this exemption from certain provisions of the Act is granted.

This Order will become effective as to any firm designated under the Commission's interim order or

hereinafter designated the later of thirty days after publication of the Order in the **Federal Register** or after filing of the consents hereinabove required. Interim relief will be extended to firms subject thereto until this Order becomes effective as to such firms, but in no event shall interim relief extend past one hundred and twenty (120) days after the date of publication of the Order in the **Federal Register**. Upon filing of any notice required under paragraph (1)(b) as to any firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and the SIB.

This Order is issued pursuant to Commission Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. For example, the relief granted to a specific firm may be suspended upon the firm's failure to provide access to its books and records. If necessary, provisions will be made for servicing existing client positions.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules and will make necessary adjustments if appropriate.

Issued in Washington, DC, on May 15, 1989.

Jean A. Webb,

Secretary of the Commission.

Exhibit A—Side Letter Relating to UK/US MOU

1. We refer to the Memorandum of Understanding between the Department of Trade and Industry, the Securities and Exchange Commission and the Commodity Futures Trading Commission ("CFTC") on the exchange of information relating to securities and futures and options which was signed on 23 September 1986, as supplemented on 22 November 1988 by the Memorandum Relating to UK/US MOU (hereinafter collectively referred to as "UK/US MOU") adding the Securities and Investment Board Ltd. ("SIB") as a signatory.

2. Whereas the SIB is performing important regulatory functions delegated to it under the Financial Services Act 1986 ("FSA"), including compliance and surveillance functions and oversight of compliance and surveillance functions performed by certain United Kingdom self regulating organisations related to firms engaged in investment business in the United Kingdom;

3. In consideration of the SIB's regulatory responsibilities with respect to persons and Recognized Investment Exchanges authorized to do investment business pursuant to section 27(2) and 37 of the FSA, respectively and the CFTC's rules governing foreign futures and options transactions in Part 30 of its rules which, among other things, contains procedures for the CFTC to approve certain foreign option products and for granting specified firms in foreign jurisdictions engaged in transactions subject to Part 30 of the CFTC's rules an exemption from the application of certain of the requirements thereunder based upon a determination that the regulatory system in effect in the foreign jurisdiction is comparable to the system in effect in the United States;

4. In order to ensure that the arrangements under the UK/US MOU will continue to operate effectively having regard to the regulatory requirements in effect in the United States and the United Kingdom; desiring to facilitate the international trading in and efficient international clearance and settlement of futures and options; and recognizing the need for the establishment of exchanges of information as needed for the proper monitoring and operation of such trading, clearing and settlement;

The SIB and CFTC understand the following:

(a) This Side Letter concerns requests for information (including any request for immediate access to or delivery of the books and records of firms) required for the purposes of enabling or assisting the SIB and the CFTC to fulfill their respective functions relating to monitoring compliance with applicable Part 30 rules and the terms and conditions of Orders issued by the CFTC under Part 30 of its rules:

(i) To specified firms in the United Kingdom exempting such firms from the application of certain of the Part 30 rules; or

(ii) Relating to the offer or sale in the United States of certain United Kingdom option products.

(b) As modified by paragraphs (c), (d), (e) and (f) below, the provisions of the UK/US MOU will be deemed to apply to any request for information made under this Side Letter to monitor compliance with the provisions mentioned in paragraph (a) above which, for the purposes of this Side Letter, will be deemed to be legal rules or requirements within the meaning of the UK/US MOU.

(c) Any request for information made under this Side Letter will be deemed to be in compliance with paragraphs 7 (a), (b) and (d) of the UK/US MOU if such request states that it is so made and satisfies the following requirements:

(i) Where ever possible it shall be in writing but in case of urgency it may be oral, but confirmed in writing within 10 days.

(ii) It shall clearly specify the following:

(A) The information required and, if known, the identity of the person or persons whose compliance with a legal rule or requirement is being monitored;

(B) The general purpose for which the information is sought, indicating in particular the legal rule or requirement pertaining to the matter which is the subject of the request;

(C) The ground for concern giving rise to the request.

(iii) The requested information must be reasonably related to the purpose for which the information is sought.

(iv) Where it is apparent to the SIB or CFTC when requesting the information that another person may obtain such information for a purpose other than monitoring, enforcing or securing compliance with the legal rule or requirement, to the extent permitted by the laws of the United Kingdom, when the SIB is requesting the information, or United States, when the CFTC is requesting the information, the SIB or CFTC must disclose the particulars of the person and his interest.

(d) For the purposes of requests made under this Side Letter, the contact officers will be Director, Futures and Options Division, SIB, and Director, Division of Trading and Markets, CFTC.

(e) Where an investigation as contemplated by paragraph 8 of the UK/US MOU is initiated on the basis of information provided pursuant to a request under this Side Letter, the Director of Enforcement, SIB, or the Director, Division of Enforcement, CFTC, will give notice to his counterpart at the CFTC or SIB.

(f) Information received pursuant to a request under this Side Letter may only be used consistent with the UK/US MOU; or in connection with any Commission Order relating to United Kingdom firms or products issued pursuant to Part 30 of the Commission rules; provided, however, in the latter case, the CFTC will, to the extent practicable, give prior notice of such action to the SIB.

(g) This Side Letter will become effective as to any Order relating to United Kingdom firms or products issued under Part 30 of the Commission's rules upon the issuance by the Commission of such an Order.

Signed this 15th day of May 1989.

Securities and Investments Board

M.B. Gittins,

Director-Futures and Options Division.

Commodity Futures Trading Commission

Andrea M. Corcoran,

Director, Division of Trading and Markets.

Exhibit B—Addendum Dated May 15, 1989, to the Financial Information Sharing Memorandum of Understanding

1. We refer to the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on 1 September 1988 by, among others, the Securities and Investments Board ("SIB"), Commodity Futures Trading Commission ("CFTC"), United Kingdom Self-Regulating Organisations ("SROs") and United States SROs, as defined in the FISMOU.

2. We further refer to the Order of the CFTC dated May 15, 1989, granting an exemption under Rule 30.10 of the CFTC's rules to the SIB and certain U.K. SROs and to those firms which they designate pursuant to which the CFTC will, among other things, defer to the financial regulation rules of the relevant U.K. regulator.

3. In consideration of the foregoing, and of the need to share financial information from time to time and on a regular basis with respect to firms in the United Kingdom granted an exemption under Rule 30.10, the undersigned parties hereby agree to this Addendum as permitted by paragraph (2) of Article VI of FISMOU:

(a) In accordance with paragraph 3(c) of Article III of FISMOU, the SIB or the relevant U.K. SRO will use its best efforts to notify and discuss with the CFTC if it becomes aware, through a U.K. SRO or otherwise, of any information which in its respective judgment materially and adversely affects the financial or operational viability of any firm domiciled in the United Kingdom and doing business in the United States under a comparability exemption granted pursuant to Rule 30.10 of the CFTC's rules.

(b) The SIB or the relevant U.K. SRO will provide to the CFTC, commencing with the first filing due after the effective date of this Addendum, as promptly as practicable after receipt of the relevant report, the following information with respect to a firm domiciled in the United Kingdom doing business in the United States under a comparability exemption granted pursuant to Rule 30.10:

(i) Copies of: (A) on an annual basis, a statement containing, with respect to such firm, financial information analogous to that set forth in the cover sheet required to be provided by U.S. SROs to the relevant U.K. regulator pursuant to Article III of FISMOU concerning an FMC; or (B) the annual audited financial statement, including the annual auditors report, required under the rules of the SIB or the relevant U.K. SRO. In either case, the SIB or relevant U.K. SRO will represent that it has reviewed the annual audited financial statement and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the financial resources requirements of the SIB or relevant U.K. SRO promulgated under the FSA. If the SIB or relevant U.K. SRO provides the cover sheet in accordance with (A) above, the SIB or relevant U.K. SRO will provide a copy of the firm's annual audited financial statement upon request of the CFTC.

(ii) Details of any notifications received under the rules of the SIB or relevant U.K. SRO regarding any breach of the financial resources requirements.

(c) The SIB or relevant U.K. SRO will provide the Commission simultaneously with its notification of the sponsorship of a firm domiciled in the United Kingdom wishing to do business in the United States under a comparability exemption pursuant to Rule 30.10 with the following information:

Copies of: (i) A statement containing, with respect to such firm, financial information analogous to that set forth in the cover sheet required to be provided by U.S. SROs to the relevant U.K. regulator pursuant to Article III of FISMOU concerning an FCM; or (ii) the most recent annual audited financial statement, including the annual auditors report, required under the rules of the SIB or the relevant U.K. SRO. In either case, the SIB or relevant U.K. SRO will represent that it has reviewed the annual audited financial statement and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the financial resources requirements of the SIB or relevant U.K. SRO promulgated under the FSA. If the SIB or relevant U.K. SRO provides the cover sheet in accordance with (i) above, the SIB or relevant U.K. SRO will provide a copy of the firm's annual audited financial statement upon request of the CFTC.

(d) The CFTC may make information received pursuant to this Addendum available to National Futures Association.

(e) Except as otherwise provided herein, the provisions of the FISMOU shall apply to this Addendum, to the extent relevant.

Signed this 15th day of May 1989.

United States Commodity Futures Trading Commission,

by Wendy L. Gramm,

National Futures Association,

by Robert K. Wilmouth,

Securities and Investments Board,

by David Walker,

The Securities Association,

by John Young,

The Association of Futures Brokers and Dealers Limited,

by Phillip Thorpe,

Investment Management Regulatory Organisation Ltd.,

by J.A. Morgan

Exhibit C—Form of Consent

In the event that a dispute arises between you [name of customer resident in the United States] and [name of United Kingdom firm] with respect to transactions subject to part 30 of the commodity futures trading commission's rules, various forums may be available for resolving the dispute, including courts of competent jurisdiction in the United States and United Kingdom and arbitration programs made available both in the United States and United Kingdom.

In the event you wish to initiate an arbitration proceeding against this firm to resolve such dispute under the applicable rules of the National Futures Association ("NFA") in the United States, you hereby consent that you will first commence mediation or conciliation in accordance with such procedures as may be made available by the relevant United Kingdom regulator, information on which is provided to you herewith. The outcome of such United Kingdom mediation or conciliation is nonbinding. You may subsequently accept this resolution, or you may proceed either to binding arbitration under the rules of the relevant United Kingdon regulator or to binding arbitration in the United States under the rules of NFA. In this connection, you should know that NFA will reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange. If you accept the mediated or conciliated resolution or elect to proceed to arbitration, or to any other form of binding resolution, under the rules of the relevant United Kingdom regulator or foreign exchange, you will be precluded from subsequently initiating an arbitration proceeding at NFA.

You may initiate an NFA arbitration proceeding upon receipt of documentation from the relevant United Kingdom regulator:

(i) Evidencing completion of the mediation or concilation process and reminding you of your right of access to NFA's arbitration proceeding; or

(ii) Representing that more than nine months have elapsed since you commenced the mediation or concilation process and that such process is not yet complete and reminding you of your right of access to NFA's arbitration proceeding.

The documentation referred to above must be presented to NFA at the time you initiate the NFA arbitration proceeding. NFA will exercise its discretion not to accept your demand for arbitration absent such documentation.

By signing this consent, you are not waiving any other rights to any other legal remedies available under law.

_____

Customer

_____

Date

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for Part 30 continues to read as follow:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a (1982).

2. Appendix C to Part 30 is amended by adding the following entry to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

* * * * *

Firms designated by the Securities and Investments Board.

FR date and citation: May 19, 1989; 54 FR ——.

[FR Doc. 89-12089 Filed 5-18-89; 8:45 am]

BILLING CODE 6351-01-M

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to firms designated by the Association of Futures Brokers and Dealers ("AFBD") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, 17 CFR 30.10 (1988), which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Lystra Blake, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order: -

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Firms Designated by the Association of Futures Brokers and Dealers From the Application of Certain of the Foreign Futures and Option Rules the Later of Thirty Days After Publication of the Order Herein in the Federal Register or After the Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein.

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to United States customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, among other things, the Commission considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission Rule 30.10, determined to permit persons located outside the United States and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Commission Rule 30.10, 52 FR 28980, 29001. These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining adequate standards of customer and market protection within the United States.

Moreover, the Commission specifically stated in adopting Commission Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to provide access to their books and records in the United States to Commission and Department of Justice representatives; and (3) notify the NFA of the commencement or termination of business in the United States.[1]

By letter dated January 28, 1988, the AFBD, which has been recognized as a self-regulating organisation in the United Kingdom pursuant to Section 10 of the Financial Services Act, petitioned the Commission on behalf of member firms for an exemption from the application of the Commission's foreign futures and option rules. In support of its petition, AFBD states that granting such an exemption with respect to member firms which it has designated would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory scheme comparable to that imposed by the Commodity Exchange Act ("Act") and the regulations thereunder.

Based upon a review of the petition, supporting materials filed by AFBD, the Order of the Commission issued on this

[1] 52 FR 26930, 28981 and 29002.

day granting the petition of the Securities and Investments Board ("SIB") in the United Kingdom, which has oversight responsibilities with respect to AFBD, and the recommendation of the staff, the Commission has concluded that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with applicable United Kingdom law, SIB and AFBD rules may be substituted for compliance with those sections of the Act more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;
—The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7 (1988);
—Those sections of Part 1 of the Commission's financial regulations that apply to foreign futures and options sold in the United States as set forth in Part 30; and
—Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30;

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in the United Kingdom.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons in the United Kingdom who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of firms;

(2) Financial requirements for authorized persons including, without limitation, a requirement that all firms immediately notify AFBD if the firms' adjusted net capital falls below a specified level and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer funds which is designed to preclude the use of customer funds to satisfy house obligations and requires separate accounting for such funds, augmented by a compensation scheme designed to compensate customers whose funds are segregated and who have suffered a loss as a result of fraud and/or insolvency of an authorized person;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation;

(5) Sales practice standards for authorized firms and persons acting on their behalf which include, for example, a requirement that authorized persons know their customers, required disclosures to prospective customers and prohibitions on misleading advertising and improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities which take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing information between the Commission, SIB [2] and AFBD for monitoring purposes on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds, position data, data on firms' standing to do business and financial condition, and for cooperating with the Commission in inquiries, compliance matters, investigations and enforcement proceedings.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission Rule 30.9, 17 CFR 30.9 (1988), or the disclosure provisions of Commission Rule 30.6, 17 CFR 30.6 (1988).[3] Moreover, the relief granted is directed to brokerage activities on or subject to the rules of recognized investment exchanges ("RIEs") in the United Kingdom [4] or any other exchange, other than a contract market designated as such pursuant to section 5 of the Act, which is a designated investment exchange under SIB Conduct of Business Rule 1.04, undertaken by firms authorized to do investment business in the United Kingdom from a location in the United Kingdom. These RIEs currently include the London International Financial Futures Exchange, London Commodity Exchange, London Metal Exchange, Baltic Futures Exchange, and the International Petroleum Exchange of London. The relief does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading in United States markets for its own account would be subject to the Commission's large trader reporting requirements. *See, eg.*, 17 CFR Part 18 (1988). Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers. *See, e.g.*, 17 CFR Parts 17 and 21 (1988). The relief herein is inapplicable where the firm solicits or effects transactions on United States markets for United States customers. In that case, the firm must comply with all applicable United States laws and

[2] *See, e.g.*, "Memorandum of Understanding on Exchange of Information between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and Between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures" signed on September 23, 1986, as supplemented by "Memorandum Relating to UK/US MOU" signed on November 22, 1988 adding the SIB as a signatory to the MOU (hereinafter collectively referred to as "UK/US MOU"), and the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on September 1, 1988 by, among others, the SIB, the Commission and United Kingdom and United States self-regulatory organizations, including TSA and the NFA.

[3] Commission Rule 30.6 requires that customers resident in the United States who enter into foreign futures and option transactions also be furnished with the options risk disclosure statement in Commission Rule 33.7, 17 CFR 33.7 (1988). No option product traded on any RIE in the United Kingdom may be offered or sold to customers resident in the United States until the Commission issues an Order pursuant to Commission Rule 30.3(a), 17 CFR 30.3(a) (1988), approving the offer or sale in the United States of such option product. In that connection, in considering any petition requesting that United Kingdom option products subject to Part 30 be approved for offer or sale in the United States, the Commission will assess the degree to which the United Kingdom's options risk disclosure statement addresses the same matters as those set forth in the Commission's options risk disclosure statement in determining whether the United Kingdom's statement may be substituted for the language in Commission Rule 33.7.

In that connection, notwithstanding the fact that the Commission has approved the offer or sale in the United States of certain option products traded on the Singapore International Monetary Exchange, the Sydney Futures Exchange and the Montreal Exchange, no firm exempted hereunder may offer or sell such option products to persons resident in the United States pending a resolution of the options risk disclosure issue.

[4] *See* Financial Services Act ("FSA"), section 37.

regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firm with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in the United Kingdom; such firm is engaged in business with customers located in the United Kingdom as well as in the United States; and, to the best of its knowledge and belief, such firm and its employees and company representatives who engage in activities subject to Part 30 would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) It will promptly notify the Commission of all material changes in AFBD's rules;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than United Kingdom customers under all relevant provisions of United Kingdom law;

(e) In the event AFBD has approved a particular firm's proprietary options model, that AFBD will certify that the use of such proprietary option model results in a financial resource requirement for that firm which is no less stringent than that required under AFBD's rules generally;

(f) Acknowledges that the Side Letter to the UK/US MOU makes provision for access to or delivery of the books and records of firms and confirms that AFBD will cooperate in providing access to such books and records to the Commission through SIB in accordance with the terms of the Side Letter to the UK/US MOU; and

(g) It will cooperate with the Commission in connection with information sharing pursuant to the Addendum to the FISMOU; [5] will cooperate with the Department of Trade and Industry and the SIB in connection with requests made pursuant to the UK/US MOU; and will cooperate with the SIB in connection with requests made pursuant to the Side Letter to the UK/US MOU.[6]

(2) Each firm seeking relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act by filing a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission Rule 30.5, 17 CFR 30.5 (1988), unless a currently effective valid and binding agency agreement has previously been filed by or on behalf of such firm in connection with the interim relief granted by the Commission with respect to certain persons on January 29, 1988, 53 FR 3338 (February 5, 1988), as extended on April 4, 1988, 53 FR 11491 (April 7, 1988), and by letters dated July 5, 1988, November 2, 1988, and December 22, 1988;

(b) Acknowledges that it can be required by AFBD to provide to AFBD immediate access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in the United Kingdom and that AFBD will cooperate in providing access to such books and records to the Commission through the SIB in accordance with the terms of the Side Letter to the UK/US MOU;

(c) Consents that all futures or regulated option transactions with respect to customers resident in the United States will be made on or subject to the rules of an RIE or any other exchange, other than a contract market designated as such pursuant to section 5 of the Act, designated by the SIB under SIB Conduct of Business Rule 1.04, and will be undertaken consistent with the rules of AFBD and applicable provisions of the Financial Services Act;

(d) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission Rule 3.32, 17 CFR 3.32 (1988);

(e) Discloses the identity of each subsidiary or affiliated domiciled in the United States with a related business (*e.g.*, banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

(f) Subject to NFA's stated policy to reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange, consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30; provided, however, that the firm may require its customers resident in the United States to execute the consent attached hereto as Exhibit C concerning the exhaustion of certain mediation or conciliation procedures made available by AFBD prior to bringing an NFA arbitration proceeding; and, provided further, that the firm must undertake to provide the customer with information concerning how to commence such procedures and documentation of the commencement of such procedures pursuant to the consent attached hereto as Exhibit C;

(g) Consents to the release of financial information relating to the firm as specified in the FISMOU, as amended, between, among others, the Commission, SIB and AFBD;

(h) Consents to refuse customers resident in the United States the option of not segregating funds notwithstanding relevant provisions of the United Kingdom regulatory system and otherwise consents to provide all customers resident in the United States no less stringent regulatory protection than United Kingdom customers under all relevant provisions of United Kingdom law;

(i) In the event a firm is using an approved bank undertaking to meet any part of the financial resources requirement of the AFBD and the value of segregated funds held by the firm on behalf of customers resident in the United States exceeds 17.5 times the absolute minimum financial resource requirement applicable to the firm, consents to report on its quarterly financial statement to AFBD, or at such other times as may be specified by AFBD, the value of funds required to be segregated on behalf of customers resident in the United States; and

(j) Undertakes to comply with the applicable provisions of United Kingdom law and AFBD rules which form the basis upon which this exemption from certain provisions of the Act is granted.

This Order will become effective as to any firm designated under the Commission's interim order or

[5] *See* the Addendum to the FISMOU attached hereto as Exhibit A.

[6] *See* Side Letter to the UK/US MOU attached hereto as Exhibit B.

hereinafter designated the later of thirty days after publication of the Order in the **Federal Register** or after filing of the consents hereinabove required. Interim relief will be extended to firms subject thereto until this Order becomes effective as to such firms, but in no event shall interim relief extend past one hundred and twenty (120) days after the date of publication of the Order in the **Federal Register**. Upon filing of any notice required under paragraph (1)(b) as to any firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and AFBD.

This Order is issued pursuant to Commission Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. For example, the relief granted to a specific firm may be suspended upon the firm's failure to provide access to its books and records. If necessary, provisions will be made for servicing existing client positions.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules and will make necessary adjustments if appropriate.

Issued in Washington, DC, on May 15, 1989.

Jean A. Webb,

Secretary of the Commission.

Exhibit A—Addendum Dated May 15, 1989, to the Financial Information Sharing Memorandum of Understanding

1. We refer to the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on 1 September 1988 by, among others, the Securities and Investments Board ("SIB"), Commodity Futures Trading Commission ("CFTC"), United Kingdom Self-Regulating Organizations ("SROs") and United States SROs, as defined in the FISMOU.

2. We further refer to the Order of the CFTC dated May 15, 1989, granting an exemption under Rule 30.10 of the CFTC's rules to the SIB and certain U.K. SROs and to those firms which they designate pursuant to which the CFTC will, among other things, defer to the financial regulation rules of the relevant U.K. regulator.

3. In consideration of the foregoing, and of the need to share financial information from time to time and on a regular basis with respect to firms in the United Kingdom granted an exemption under Rule 30.10, the undersigned parties hereby agree to this Addendum as permitted by paragraph (2) of Article VI of FISMOU:

(a) In accordance with paragraph 3(c) of Article III of FISMOU, the SIB or the relevant U.K. SRO will use its best efforts to notify and discuss with the CFTC if it becomes aware, through a U.K. SRO or otherwise, of any information which in its respective judgment materially and adversely affects the financial or operational viability of any firm domiciled in the United Kingdom and doing business in the United States under a comparability exemption granted pursuant to Rule 30.10 of the CFTC's rules.

(b) The SIB or the relevant U.K. SRO will provide to the CFTC, commencing with the first filing due after the effective date of this Addendum, as promptly as practicable after receipt of the relevant report, the following information with respect to a firm domiciled in the United Kingdom doing business in the United States under a comparability exemption granted pursuant to Rule 30.10:

(i) Copies of: (A) On an annual basis, a statement containing, with respect to such firm, financial information analogous to that set forth in the cover sheet required to be provided by U.S. SROs to the relevant U.K. regulator pursuant to Article III of FISMOU concerning an FCM; or (B) the annual audited financial statement, including the annual auditors report, required under the rules of the SIB or the relevant U.K. SRO. In either case, the SIB or relevant U.K. SRO will represent that it has reviewed the annual audited financial statement and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the financial resources requirements of the SIB or relevant U.K. SRO promulgated under the FSA. If the SIB or relevant U.K. SRO provides the cover sheet in accordance with (A) above, the SIB or relevant U.K. SRO will provide a copy of the firm's annual audited financial statement upon request of the CFTC.

(ii) Details of any notifications received under the rules of the SIB or relevant U.K. SRO regarding any breach of the financial resources requirements.

(c) The SIB or relevant U.K. SRO will provide the Commission simultaneously with its notification of the sponsorship of a firm domiciled in the United Kingdom wishing to do business in the United States under a comparability exemption pursuant to Rule 30.10 with the following information:

Copies of: (i) A statement containing, with respect to such firm, financial information analogous to that set forth in the cover sheet required to be provided by U.S. SROs to the relevant U.K. regulator pursuant to Article III of FISMOU concerning an FCM; or (ii) the most recent annual audited financial statement, including the annual auditors report, required under the rules of the SIB or the relevant U.K. SRO. In either case, the SIB or relevant U.K. SRO will represent that it has reviewed the annual audited financial statement and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the financial resources requirements of the SIB or relevant U.K. SRO promulgated under the FSA. If the SIB or relevant U.K. SRO provides the cover sheet in accordance with (i) above, the SIB or relevant U.K. SRO will provide a copy of the firm's annual audited financial statement upon request of the CFTC.

(d) The CFTC may make information received pursuant to this Addendum available to National Futures Association.

(e) Except as otherwise provided herein, the provisions of the FISMOU shall apply to this Addendum, to the extent relevant.

Signed this 15th day of May 1989.

United States Commodity Futures Trading Commission,
by Wendy L. Gramm,
National Futures Association,
by Robert K. Wilmouth,
Securities and Investments Board,
by David Walker,
The Securities Association,
by John Young,
The Association of Futures Brokers and Dealers Limited,
by Phillip Thorpe,
Investment Management Regulatory Organisation Ltd.,
by J.A. Morgan

Exhibit B—Side Letter Relating to UK/US MOU

1. We refer to the Memorandum of Understanding between the Department of Trade and Industry, the Securities and Exchange Commission and the Commodity Futures Trading Commission ("CFTC") of the exchange of information relation to securities and futures and options which was signed on 23 September 1986, as supplemented on 22 November 1988 by the Memorandum Relating to UK/US MOU (hereinafter collectively referred to as "UK/US MOU") adding the

Securities and Investments Board Ltd. ("SIB") as a signatory.

2. Whereas the SIB is performing important regulatory functions delegated to it under the Financial Services Act 1986 ("FSA"), including compliance and surveillance functions and oversight of compliance and surveillance functions performed by certain United Kingdom self regulating organisations related to firms engaged in investment business in the United Kingdom;

3. In consideration of the SIB's regulatory responsibilities with respect to persons and Recognized Investment Exchanges authorized to do investment business pursuant to Section 27(2) and 37 of the FSA, respectively and the CFTC's rules governing foreign futures and option transactions in Part 30 of its rules which, among other things, contains procedures for the CFTC to approve certain foreign option products and for granting specified firms in foreign jurisdictions engaged in transactions subject to Part 30 of the CFTC's rules an exemption from the application of certain of the requirements thereunder based upon a determination that the regulatory system in effect in the foreign jurisdiction is comparable to the system in effect in the United States;

4. In order to ensure that the arrangements under the UK/US MOU will continue to operate effectively having regard to the regulatory requirements in effect in the United States and the United Kingdom; desiring to facilitate the international trading in and efficient international clearance and settlement of futures and options; and recognizing the need for the establishment of exchanges of information as needed for the proper monitoring and operation of such trading, clearing and settlement;

The SIB and CFTC understand the following:

(a) This Side Letter concerns requests for information (including any request for immediate access to or delivery of the books and records of firms) required for the purposes of enabling or assisting the SIB and the CFTC to fulfill their respective functions relating to monitoring compliance with applicable Part 30 rules and the terms and conditions of Orders issued by the CFTC under Part 30 of its rules:

(i) To specified firms in the United Kingdom exempting such firms from the application of certain of the Part 30 rules; or

(ii) Relating to the offer or sale in the United States of certain United Kingdom option products.

(b) As modified by paragraphs (c), (d), (e) and (f) below, the provisions of the UK/US MOU will be deemed to apply to any request for information made under this Side Letter to monitor compliance with the provisions mentioned in paragraph (a) above which, for the purposes of this Side Letter, will be deemed to be legal rules or requirements within the meaning of the UK/US MOU.

(c) Any request for information made under this Side Letter will be deemed to be in compliance with paragraphs 7 (a), (b) and (d) of the UK/US MOU if such request states that it is so made and satisfies the following requirements:

(i) Where ever possible it shall be in writing but in case of urgency it may be oral, but confirmed in writing within 10 days.

(ii) It shall clearly specify the following:

(A) The information required and, if known, the identity of the person or persons whose compliance with a legal rule or requirement is being monitored;

(B) The general purpose of which the information is sought, indicating in particular the legal rule or requirement pertaining to the matter which is the subject of the request;

(C) The ground for concern giving rise to the request.

(iii) The requested information must be reasonably related to the purpose for which the information is sought.

(iv) Where it is apparent to the SIB or CFTC when requesting the information that another person may obtain such information for a purpose other than monitoring, enforcing or securing compliance with the legal rule or requirement, to the extent permitted by the laws of the United Kingdom, when the SIB is requesting the information, or United States, when the CFTC is requesting the information, the SIB or CFTC must disclose the particulars of the person and his interest.

(d) For the purposes of requests made under this Side Letter, the contact officers will be Director, Futures and Options Division, SIB, and Director, Division of Trading and Markets, CFTC.

(e) Where an investigation as contemplated by paragraph 8 of the UK/US MOU is initiated on the basis of information provided pursuant to a request under this Side Letter, the Director of Enforcement, SIB, or the Director, Division of Enforcement, CFTC, will give notice to his counterpart at the CFTC or SIB.

(f) Information received pursuant to a request under this Side Letter may only be used consistent with the UK/US MOU; or in connection with any Commission Order relating to United Kingdom firms or products issued pursuant to Part 30 of the Commission rules; provided, however, in the latter case, the CFTC will, to the extent practicable, give prior notice of such action to the SIB.

(g) This Side Letter will become effective as to any Order relating to United Kingdom firms or products issued under Part 30 of the Commission's rules upon the issuance by the Commission of such an Order.

Signed this 15th day of May 1989.

Securities and Investments Board

M.B. Gittins,

Director—Futures and Options Division.

Commodity Futures Trading Commission

Andrea M. Corroran,

Director, Division of Trading and Markets.

Exhibit C—Form of Consent

In the event that a dispute arises between you [name of customer resident in the United States] and [name of United Kingdom firm] with respect to transactions subject to Part 30 of the Commodity Futures Trading Commission's rules, various forums may be available for resolving the dispute, including courts of competent jurisdiction in the United States and United Kingdom and arbitration programs made available both in the United States and United Kingdom.

In the event you wish to initiate an arbitration proceeding against this firm to resolve such dispute under the applicable rules of the National Futures Association ("NFA") In the United States, you hereby consent that you will first commence mediation or conciliation in accordance with such procedures as may be made available by the relevant United Kingdom regulator, information on which is provided to you herewith. The outcome of such United Kingdom mediation or conciliation is nonbinding. You may subsequently accept this resolution, or you may proceed either to binding arbitration under the rules of the relevant United Kingdom regulator or to binding arbitration in the United States under the rules of NFA. In this connection, you should know that NFA will reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange. If you accept the mediated or conciliated resolution or elect to proceed to arbitration, or to any other form of binding resolution, under the rules of the relevant United Kingdom regulator or foreign exchange, you will be precluded from subsequently initiating an arbitration proceeding at NFA.

Your may initiate an NFA arbitration proceeding upon receipt of documentation from the relevant United Kingdom regulator:

(i) Evidencing completion of the mediation or conciliation process and reminding you of your right of access to NFA's arbitration proceeding; or

(ii) Representing that more than nine months have elapsed since you commenced the mediation or conciliation process and that such process is not yet complete and reminding you of your right of access to NFA's arbitration proceeding.

The documentation referred to above must be presented to NFA at the time you initiate the NFA arbitration proceeding. NFA will exercise its discretion not to accept your demand for arbitration absent such documentation.

By signing this consent, you are not waiving any other rights to any other legal remedies available under law.

Customer

Date

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a (1982).

2. Appendix C to Part 30 is amended by adding the following entry to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

* * * * *

Firms designated by the Association of Futures Brokers and Dealers.

FR date and citation: May 19, 1989; 54 FR ———.

[FR Doc. 89-12092 Filed 5-18-89; 8:45 am]

BILLING CODE 6351-01-M

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to firms designated by The Securities Association ("TSA") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, 17 CFR 30.10 (1988), which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Shauna Turnbull, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Firms Designated by The Securities Association from the Application of Certain of the Foreign Futures and Option Rules the Later of Thirty Days after Publication of the Order Herein in the Federal Register or after Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to United States customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, among other things, the Commission considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission Rule 30.10, determined to permit persons located outside the United States and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Commission Rule 30.10, 52 FR 28980, 29001. These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining adequate standards of customer and market protection within the United States.

Moreover, the Commission specifically stated in adopting Commission Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to provide access to their books and records in the United States to Commission and Department of Justice representatives; and (3) notify the NFA of the commencement or termination of business in the United States.[1]

By letter dated June 24, 1988, TSA, which has been recognized as a self-regulating organisation in the United Kingdom pursuant to Section 10 of the Financial Services Act, petitioned the Commission on behalf of member firms for an exemption from the application of the Commission's foreign futures and option rules. In support of its petition, TSA states that granting such an exemption with respect to member firms which it has designated would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory scheme comparable to that imposed by the Commodity Exchange Act ("Act") and the regulations thereunder.

Based upon a review of the petition, supporting materials filed by TSA, the Order of the Commission issued on this

[1] 52 FR 28980, 28981 and 29002.

day granting the petition of the Securities and Investments Board ("SIB") in the United Kingdom, which has oversight responsibilities with respect to TSA, and the recommendation of the staff, the Commission has concluded that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with applicable United Kingdom law, SIB and TSA rules may be substituted for compliance with those sections of the Act more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;
—The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7 (1988);
—Those sections of Part 1 of the Commission's financial regulations that apply to foreign futures and options sold in the United States as set forth in Part 30; and
—Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30;

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in the United Kingdom.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons in the United Kingdom who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of firms;

(2) Financial requirements for authorized persons including, without limitation, a requirement that all firms immediately notify TSA if the firms' adjusted net capital falls below a specified level and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer funds which is designed to preclude the use of customer funds to satisfy house obligations and requires separate accounting for such funds, augmented by a compensation scheme designed to compensate customers whose funds are segregated and who have suffered a loss as a result of fraud and/or insolvency of an authorized person;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation;

(5) Sales practice standards for authorized firms and persons acting on their behalf which include, for example, a requirement that authorized persons know their customers, required disclosures to prospective customers and prohibitions on misleading advertising and improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities which take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing information between the Commission, SIB [2] and TSA for monitoring purposes on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds, position data, data on firms, standing to do business and financial condition, and for cooperating with the Commission in inquiries, compliance matters, investigations and enforcement proceedings.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission Rule 30.9, 17 CFR 30.9 (1988), or the disclosure provisions of Commission Rules 30.6, 17 CFR 30.6 (1988).[3] Moreover, the relief granted is directed to brokerage activities on or subject to the rules of recognized investment exchanges ("RIEs") in the United Kingdom [4] or any other exchange, other than a contract market designated as such pursuant to section 5 of the Act, which is a designated investment exchange under SIB Conduct of Business Rule 1.04, undertaken by firms authorized to do investment business in the United Kingdom from a location in the United Kingdom. These RIEs currently include the London International Financial Futures Exchange, London Commodity Exchange, London Metal Exchange, Baltic Futures Exchange and the International Petroleum Exchange of London. The relief does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading in United States markets for its own account would be subject to the Commission's large trader reporting requirements. *See, e.g.*, 17 CFR Part 18 (1988). Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers. *See, e.g.*, 17 CFR Parts 17 and 21 (1988). The relief herein is inapplicable where the firm solicits or effects transactions on United States markets for United States customers. In that case, the firm must comply with all applicable United States laws and

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[2] *See, e.g.*, "Memorandum of Understanding on Exchange of Information between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and Between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures" signed on September 23, 1986, as supplemented by "Memorandum Relating to UK/US MOU" signed on November 22, 1988 adding the SIB as a signatory to the MOU (hereinafter collectively referred to as "UK/US MOU"), and the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on September 1, 1988 by, among others, the SIB, the Commission and United Kingdom and United States self-regulatory organizations, including TSA and the NFA.

[3] Commission Rule 30.6 requires that customers resident in the United States who enter into foreign futures and option transactions also be furnished with the options risk disclosure statement in Commission Rule 33.7, 17 CFR 33.7 (1988). No option product traded on any RIE in the United Kingdom may be offered or sold to customers resident in the United States until the Commission issues an Order pursuant to Commission Rule 30.3(a), 17 CFR 30.3(a) (1988), approving the offer or sale in the United States of such option product. In that connection, in considering any petition requesting that United Kingdom option products subject to Part 30 be approved for offer or sale in the United States, the Commission will assess the degree to which the United Kingdom's options risk disclosure statement addresses the same matters as those set forth in the Commission's options risk disclosure statement in determining whether the United Kingdom's statement may be substituted for the language in Commission Rule 33.7.

In that connection, notwithstanding the fact that the Commission has approved the offer or sale in the United States of certain option products traded on the Singapore International Monetary Exchange, the Sydney Futures Exchange and the Montreal Exchange, no firm exempted hereunder may offer or sell such option products to persons resident in the United States pending a resolution of the options risk disclosure issue.

[4] *See* Financial Services Act ("FSA"), section 37.

regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firm with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in the United Kingdom; such firm is engaged in business with customers located in the United Kingdom as well as in the United States; and, to the best of its knowledge and belief, such firm and its employees and company representatives who engage in activities subject to Part 30 would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) It will promptly notify the Commission of all material changes in TSA's rules;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than United Kingdom customers under all relevant provisions of United Kingdom law;

(e) In the event TSA has approved a particular firm's proprietary options model, that TSA will certify that the use of such proprietary option model results in a financial resource requirement for that firm which is no less stringent than that required under TSA's rules generally;

(f) Acknowledges that the Side Letter to the UK/US MOU makes provision for access to or delivery of the books and records of firms and confirms that TSA will cooperate in providing access to such books and records to the Commission through SIB in accordance with the terms of the Side Letter to the UK/US MOU; and

(g) It will cooperate with the Commission in connection with information sharing pursuant to the Addendum to the FISMOU;[5] will cooperate with the Department of Trade and Industry and the SIB in connection with requests made pursuant to the UK/US MOU; and will cooperate with the SIB in connection with requests made pursuant to the Side Letter to the UK/US MOU.[6]

(2) Each firm seeking relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act by filing a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission Rule 30.5, 17 CFR 30.5 (1988), unless a currently effective valid and binding agency agreement has previously been filed by or on behalf of such firm in connection with the interim relief granted by the Commission with respect to certain persons on January 29, 1988, 53 FR 3338 (February 5, 1988), as extended on April 4, 1988, 53 FR 11491 (April 7, 1988), and by letters dated July 5, 1988, November 2, 1988 and December 22, 1988;

(b) Acknowledges that it can be required by TSA to provide to TSA immediate access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in the United Kingdom and that TSA will cooperate in providing access to such books and records to the Commission through the SIB in accordance with the terms of the Side Letter to the UK/US MOU;

(c) Consents that all futures or regulated option transactions with respect to customers resident in the United States will be made on or subject to the rules of an RIE or any other exchange, other than a contract market designated as such pursuant to section 5 of the Act, designated by the SIB under SIB Conduct of Business Rule 1.04, and will be undertaken consistent with the rules of TSA and applicable provisions of the Financial Services Act;

(d) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission Rule 3.32, 17 CFR 3.32 (1988);

(e) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

(f) Subject to NFA's stated policy to reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange, consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30; provided, however, that the firm may require its customers resident in the United States to execute the consent attached hereto as Exhibit C concerning the exhaustion of certain mediation or conciliation procedures made available by TSA prior to bringing an NFA arbitration proceeding; and, provided further, that the firm must undertake to provide the customer with information concerning how to commence such procedures and documentation of the commencement of such procedures pursuant to the consent attached hereto as Exhibit C;

(g) Consents to the release of financial information relating to the firm as specified in the FISMOU, as amended, between, among others, the Commission, SIB and TSA;

(h) Consents to refuse customers resident in the United States the option of not segregating funds notwithstanding relevant provisions of the United Kingdom regulatory system and otherwise consents to provide all customers resident in the United States no less stringent regulatory protection than United Kingdom customers under all relevant provisions of United Kingdom law;

(i) In the event a firm is using an approved bank undertaking to meet any part of the financial resources requirement of TSA and the value of segregated funds held by the firm on behalf of customers resident in the United States exceeds 17.5 times the absolute minimum financial resource requirement applicable to the firm, consents to report on its quarterly financial statement to TSA, or at such other times as may be specified by TSA, the value of funds required to be segregated on behalf of customers resident in the United States; and

(j) Undertakes to comply with the applicable provisions of United Kingdom law and TSA rules which form the basis upon which this exemption from certain provisions of the Act is granted.

This Order will become effective as to any firm designated under the Commission's interim order or

[5] *See* the Addendum to the FISMOU attached hereto as Exhibit A.

[6] *See* Side Letter to the UK/US MOU attached hereto as Exhibit B.

hereinafter designated the later of thirty days after publication of the Order in the **Federal Register** or after filing of the consents hereinabove required. Interim relief will be extended to firms subject thereto until this Order becomes effective as to such firms, but in no event shall interim relief extend past one hundred and twenty (120) days after the date of publication of the Order in the **Federal Register.** Upon filing of any notice required under paragraph (1)(b) as to any firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and TSA.

This Order is issued pursuant to Commission Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or othewise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. For example, the relief granted to a specific firm may be suspended upon the firm's failure to provide access to its books and records. If necessary, provisions will be made for servicing existing client positions.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules and will make necessary adjustments if appropriate.

Issued in Washington, DC, on May 15, 1989.

Jean A. Webb,

Secretary of the Commission.

Exhibit A—Addendum Dated May 15, 1989, to the Financial Information Sharing Memorandum of Understanding

1. We refer to the Financial information Sharing Memorandum of Understanding ("FISMOU") entered into on 1 September 1988 by, among others, the Securities and Investments Board ("SIB"), Commodity Futures Trading Commission ("CFTC"), United Kingdom Self-Regulating Organisations ("SROs") and United States SROs, as defined in the FISMOU.

2. We further refer to the Order of the CFTC dated May 15, 1989, granting an exemption under Rule 30.10 of the CFTC's rules to the SIB and certain U.K. SROs and to those firms which they designate pursuant to which the CFTC will, among other things, defer to the financial regulation rules of the relevant U.K. regulator.

3. In consideration of the foregoing, and of the need to share financial information from time to time and on a regular basis with respect to firms in the United Kingdom granted an exemption under Rule 30.10, the undersigned parties hereby agree to this Addendum as permitted by paragraph (2) of Article VI of FISMOU:

(a) In accordance with paragraph 3(c) of Article III of FISMOU, the SIB or the relevant U.K. SRO will use its best efforts to notify and discuss with the CFTC if it becomes aware, through a U.K. SRO or otherwise, of any information which in its respective judgment materially and adversely affects the financial or operational viability of any firm domiciled in the United Kingdom and doing business in the United States under a comparability exemption granted pursuant to Rule 30.10 of the CFTC's rules.

(b) The SIB or the relevant U.K. SRO will provide to the CFTC, commencing with the first filing due after the effective date of this Addendum, as promptly as practicable after receipt of the relevant report, the following information with respect to a firm domiciled in the United Kingdom doing business in the United States under a comparability exemption granted pursuant to Rule 30.10:

(i) Copies of: (A) On an annual basis, a statement containing, with respect to such firm, financial information analogous to that set forth in the cover sheet required to be provided by U.S. SROs to the relevant U.K. regulator pursuant to Article III of FISMOU concerning an FCM; or (B) the annual audited financial statement, including the annual auditors report, required under the rules of the SIB or the relevant U.K. SRO. In either case, the SIB or relevant U.K. SRO will represent that it has reviewed the annual audited financial statement and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the financial resources requirements of the SIB or relevant U.K. SRO promulgated under the FSA. If the SIB or relevant U.K. SRO provides the cover sheet in accordance with (A) above, the SIB or relevant U.K. SRO will provide a copy of the firm's annual audited financial statement upon request of the CFTC.

(ii) Details of any notifications received under the rules of the SIB or relevant U.K. SRO regarding any breach of the financial resources requirements.

(c) The SIB or relevant U.K. SRO will provide the Commission simultaneously with its notification of the sponsorship of a firm domiciled in the United Kingdom wishing to do business in the United States under a comparability exemption pursuant to Rule 30.10 with the following information:

Copies of: (i) A statement containing, with respect to such firm, financial information analogous to that set forth in the cover sheet required to be provided by U.S. SROs to the relevant U.K. regulator pursuant to Article III of FISMOU concerning an FCM; or (ii) the most recent annual audited financial statement, including the annual auditors report, required under the rules of the SIB or the relevant U.K. SRO. In either case, the SIB or relevant U.K. SRO will represent that it has reviewed the annual audited financial statement and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the financial resources requirements of the SIB or relevant U.K. SRO promulgated under the FSA. If the SIB or relevant U.K. SRO provides the cover sheet in accordance with (i) above, the SIB or relevant U.K. SRO will provide a copy of the firm's annual audited financial statement upon request of the CFTC.

(d) The CFTC may make information received pursuant to this Addendum available to National Futures Association.

(e) Except as otherwise provided herein, the provisions of the FISMOU shall apply to this Addendum, to the extent relevant.

Signed this 15th day of May 1989.

United States Commodity Futures Trading Commission,
by Wendy L. Gramm.

National Futures Association,
by Robert K. Wilmouth.

Securities and Investments Board,
by David Walker.

The Securities Association,
by John Young.

The Association of Futures Brokers and Dealers Limited,
by Phillip Thorpe.

Investment Management Regulatory Organisation Ltd.,
by J.A. Morgan.

Exhibit B—Side Letter Relating to UK/US MOU

1. We refer to the Memorandum of Understanding between the Department of Trade and Industry, the Securities and Exchange Commission and the Commodity Futures Trading Commission ("CFTC") on the exchange of information relating to securities and futures and options which was signed on 23 September 1986, as supplemented on 22 November 1988 by the Memorandum Relating to UK/US MOU (hereinafter collectively referred to as "UK/US MOU") adding the

Securities and Investments Board Ltd. ("SIB") as a signatory.

2. Whereas the SIB is performing important regulatory functions delegated to it under the Financial Services Act 1986 ("FSA"), including compliance and surveillance functions and oversight of compliance and surveillance functions performed by certain United Kingdom self regulating organisations related to firms engaged in investment business in the United Kingdom;

3. In consideration of the SIB's regulatory responsibilities with respect to persons and Recognized Investment Exchanges authorized to do investment business pursuant to section 27(2) and 37 of the FSA, respectively and the CFTC's rules governing foreign futures and option transactions in Part 30 of its rules which, among other things, contains procedures for the CFTC to approve certain foreign option products and for granting specified firms in foreign jurisdictions engaged in transactions subject to Part 30 of the CFTRC's rules an exemption from the application of certain of the requirements thereunder based upon a determination that the regulatory system in effect in the foreign jurisdiction is comparable to the system in effect in the United States;

4. In order to ensure that the arrangements under the UK/US MOU will continue to operate effectively having regard to the regulatory requirements in effect in the United States and the United Kingdom; desiring to facilitate the international trading in and efficient international clearance and settlement of futures and options; and recognizing the need for the establishment of exchanges of information as needed for the proper monitoring and operation of such trading, clearing and settlement;

The SIB and CFTC understand the following:

(a) This Side Letter concerns requests for information (including any request for immediate access to or delivery of the books and records of firms) required for the purposes of enabling or assisting the SIB and The CFTC to fulfill their respective functions relating to monitoring compliance with applicable Part 30 rules and the terms and conditions of orders issued by the CFTC under Part 30 of its rules:

(i) To specified firms in the United Kingdom exempting such firms from the application of certain of the Part 30 rules; or

(ii) Relating to the offer or sale in the United States of certain United Kingdom option products.

(b) As modified by paragraphs (c), (d), (e) and (f) below, the provisions of the UK/US MOU will be deemed to apply to any request for information made under this Side Letter to monitor compliance with the provisions mentioned in paragraph (a) above which, for the purposes of this Side Letter, will be deemed to be legal rules or requirements within the meaning of the UK/US MOU.

(c) Any request for information made under this Side Letter will be deemed to be in compliance with paragraphs 7 (a), (b) and (d) of the UK/US MOU if such request states that it is so made and satisfies the following requirements:

(i) Where ever possible it shall be in writing but in case of urgency it may be oral, but confirmed in writing within 10 days.

(ii) It shall clearly specify the following:

(A) The information required and, if known, the identity of the person or persons whose compliance with a legal rule or requirement is being monitored;

(B) The general purpose for which the information is sought, indicating in particular the legal rule or requirement pertaining to the matter which is the subject of the request;

(C) The ground for concern giving rise to the request.

(iii) The requested information must be reasonably related to the purpose for which the information is sought.

(iv) Where it is apparent to the SIB or CFTC when requesting the information that another person may obtain such information for a purpose other than monitoring, enforcing or securing compliance with the legal rule or requirement, to the extent permitted by the laws of the United Kingdom, when the SIB is requesting the information, or United States, when the CFTC is requesting the information, the SIB or CFTC must disclose the particulars of the person and his interest.

(d) For the purposes of requests made under this Side Letter, the contact officers will be Director, Futures and Options Division, SIB, and Director, Division of Trading and Markets, CFTC.

(e) Where an investigation as contemplated by paragraph 8 of the UK/US MOU is initiated on the basis of information provided pursuant to a request under this Side Letter, the Director of Enforcement, SIB, or the Director, Division of Enforcement, CFTC, will give notice to his counterpart at the CFTC or SIB.

(f) Information received pursuant to a request under this Side Letter may only be used consistent with the UK/US MOU; or in connection with any Commission Order relating to United Kingdom firms or products issued pursuant to Part 30 of the Commission rules; provided, however, in the latter case, the CFTC will, to the extent practicable, give prior notice of such action to the SIB.

(g) This Side Letter will become effective as to any Order relating to United Kingdom firms or products issued under Part 30 of the Commission's rules upon the issuance by the Commission of such an Order.

Signed this 15th day of May 1989.

Securities and Investments Board,

M.B. Gittins,

Director—Futures and Options Division.

Commodity Futures Trading Commission,

Andrea M. Corcoran,

Director, Division of Trading and Markets.

Exhibit C—Form of Consent

In the event that a dispute arises between you [name of customer resident in the United States] and [name of United Kingdom firm] with respect to transactions subject to Part 30 of the Commodity Futures Trading Commission's Rules, various forums may be available for resolving the dispute, including courts of competent jurisdiction in the United States and United Kingdom and arbitration programs made available both in the United States and United Kingdom.

In the event you wish to initiate an arbitration proceeding against this firm to resolve such dispute under the applicable rules of the National Futures Association ("NFA") in the United States, you hereby consent that you will first commence mediation or conciliation in accordance with such procedures as may be made available by the relevant United Kingdom regulator, information on which is provided to you herewith. The outcome of such United Kingdom mediation or conciliation is nonbinding. You may subsequently accept this resolution, or you may proceed either to binding arbitration under the rules of the relevant United Kingdom regulator or to binding arbitration in the United States under the rules of NFA. In this connection, you should know that NFA will reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange. If you accept the mediated or conciliated resolution or elect to proceed to arbitration, or to any other form of binding resolution, under the rules of the relevant United Kingdom regulator or foreign exchange, you will be precluded from subsequently initiating an arbitration proceeding at NFA.

You may initiate an NFA arbitration proceeding upon receipt of documentation from the relevant United Kingdom regulator:

(i) Evidencing completion of the mediation or conciliation process and reminding you of your right to access to NFA's arbitration proceeding; or

(ii) Representing that more than nine months have elapsed since you commenced the mediation or conciliation process and that such process is not yet complete and reminding you of your right of access to NFA's arbitration proceeding.

The documentation referred to above must be presented to NFA at the time you initiate the NFA arbitration proceeding. NFA will exercise its discretion not to accept your demand for arbitration absent such documentation.

By signing this consent, you are not waiving any other rights to any other legal remedies available under law.

Customer.

Date.

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a (1982).

2. Appendix C to Part 30 is amended by adding the following entry to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to §30.10

* * * * *

Firms designated by The Securities Association.

FR date and citation: May 19, 1989; 54 FR _____.

[FR Doc. 89-12091 Filed 5-18-89; 8:45 am]

BILLING CODE 6351-01-M

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to firms designated by the Investment Management Regulatory Organisation Limited ("IMRO") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, 17 CFR 30.10 (1988), which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Shauna Turnbull, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Firms Designated by the Investment Management Regulatory Organisation Limited from the Application of Certain of the Foreign Futures and Option Rules the Later of Thirty Days after Publication of the Order Herein in the Federal Register or after Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to United States customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, among other things, the Commission considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission Rule 30.10, determined to permit persons located outside the United States and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Commission Rule 30.10, 52 FR 28980, 29001. These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining adequate standards of customer and market protection within the United States.

Moreover, the Commission specifically stated in adopting Commission Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to provide access to their books and records in the United States to Commission and Department of Justice representatives; and (3) notify the NFA of the commencement or termination of business in the United States.[1]

By letter dated July 15, 1989, the IMRO, which has been recognized as a self-regulating organisation in the United Kingdom pursuant to Section 10 of the Financial Services Act, petitioned the Commission on behalf of member firms for an exemption from the application of the Commission's foreign futures and option rules. In support of its petition, IMRO states that granting such an exemption with respect to member firms which it has designated would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory scheme comparable to that imposed by the Commodity Exchange Act ("Act") and the regulations thereunder.

Based upon a review of the petition, supporting materials filed by IMRO, the

[1] 52 FR 28980, 28981 and 29002.

Order of the Commission issued on this day granting the petition of the Securities and Investments Board ("SIB") in the United Kingdom, which has oversight responsibilities with respect to IMRO, and the recommendation of the staff, the Commission has concluded that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with applicable United Kingdom law, SIB and IMRO rules may be substituted for compliance with those sections of the Act more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;
—The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7 (1988);
—Those sections of Part 1 of the Commission's financial regulations that apply to foreign futures and options sold in the United States as set forth in Part 30; and
—Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30;

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in the United Kingdom.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons in the United Kingdom who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of firms;

(2) Financial requirements for authorized persons including, without limitation, a requirement that all firms immediately notify IMRO if the firms' adjusted net capital falls below a specified level and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer funds which is designed to preclude the use of customer funds to satisfy house obligations and requires separate accounting for such funds, augmented by a compensation scheme designed to compensate customers whose funds are segregated and who have suffered a loss as a result of fraud and/or insolvency of an authorized person;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation;

(5) Sales practice standards for authorized firms and persons acting on their behalf which include, for example, a requirement that authorized persons know their customers, required disclosures to prospective customers and prohibitions on misleading advertising and improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities which take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing information between the Commission, SIB [2] and IMRO for monitoring purposes on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds, position data, data on firms, standing to do business and financial condition, and for cooperating with the Commission in inquiries, compliance matters, investigations and enforcement proceedings.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission Rule 30.9, 17 CFR 30.9 (1988), or the disclosure provisions of Commission Rule 30.6, 17 CFR 30.6 (1988).[3] Moreover, the relief granted is directed to brokerage activities on or subject to the rules of recognized investment exchanges ("RIEs") in the United Kingdom [4] or any other exchange, other than a contract market designated as such pursuant to section 5 of the Act, which is a designated investment exchange under SIB Conduct of Business Rule 1.04, undertaken by firms authorized to investment business in the United Kingdom from a location in the United Kingdom. These RIEs currently include the London International Financial Futures Exchange, London Commodity Exchange, London Metal Exchange, Baltic Futures Exchange and the International Petroleum Exchange of London. The relief does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading in United States markets for its own account would be subject to the Commission's large trader reporting requirements. *See, e.g.*, 17 CFR Part 18 (1988). Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers. *See, e.g.*, 17 CFR Parts 17 and 21 (1988). The relief herein is inapplicable where the firm solicits or effects transactions on United States markets for United States customers. In that case, the firm must comply with all applicable United States laws and

[2] *See, e.g.*, "Memorandum of Understanding on Exchange of Information between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and Between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures" signed on September 23, 1986, as supplemented by "Memoradum Relating to UK/US MOU" signed on November 22, 1988 adding the SIB as a signatory to the MOU (hereinafter collectively referred to as "UK/US MOU") and the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on September 1, 1988 by, among others, the SIB, the Commission and United Kingdom and United States self-regulatory organizations, including IMRO and the NFA.

[3] Commission Rule 30.6 requires that customers resident in the United States who enter into foreign futures and option transactions also be furnished with the options risk disclosure statement in Commission Rule 33.7, 17 CFR 33.7 (1988). No option product traded on any RIE in the United Kingdom may be offered or sold to customers resident in the United States until the Commission issues an Order pursuant to Commission Rule 30.3(a), 17 CFR 30.3(a) (1988), approving the offer and sale in the United States of such product. In that connection, in considering any petition requesting that United Kingdom option products subject to Part 30 be approved for offer and sale in the United States, the Commission will assess the degree to which the United Kingdom's options risk disclosure statement addresses the same matters as those set forth in the Commission's options risk disclosure statement in determining whether the United Kingdom's statement may be substituted for the language in Commission Rule 33.7.

In that connection, notwithstanding the fact that the Commission has approved the offer or sale in the United States of certain option products traded on the Singapore International Monetary Exchange, the Sydney Futures Exchange and the Montreal Exchange, no firm exempted hereunder may offer or sell such option products to persons resident in the United States pending a resolution of the options risk disclosure issue.

[4] *See* Financial Services Act ("FSA"), section 37.

regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organisation responsible for monitoring the compliance of such firm with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in the United Kingdom; such firm is engaged in business with customers located in the United Kingdom as well as in the United States; and, to the best of its knowledge and belief, such firm and its employees and company representatives who engage in activities subject to Part 30 would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect it continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) It will promptly notify the Commission of all material changes in IMRO's rules;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than United Kingdom customers under all relevant provisions of United Kingdom law;

(e) Acknowledges that the Side Letter to the UK/US MOU makes provision for access to or delivery of the books and records of firms and confirms that IMRO will cooperate in providing access to such books and records to the Commission through SIB in accordance with the terms of the Side Letter to the UK/US MOU; and

(f) It will cooperate with the Commission in connection with information sharing pursuant to the Addendum to the FISMOU; [5] will cooperate with the Department of Trade and Industry and the SIB in connection with requests made pursuant to the UK/US MOU; and will cooperate with the SIB in connection with requests made pursuant to the Side Letter to the UK/US MOU.[6]

(2) Each firm seeking relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act by filing a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission Rule 30.5, 17 CFR 30.5 (1988);

(b) Acknowledges that it can be required by IMRO to provide to IMRO immediate access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in the United Kingdom and that IMRO will cooperate in providing access to such books and records to the Commission through the SIB in accordance with the terms of the Side Letter to the UK/US MOU;

(c) Consents that all futures or regulated option transactions with respect to customers resident in the United States will be made on or subject to the rules of an RIE or any other exchange, other than a contract market designated as such pursuant to section 5 of the Act, designated by the SIB under SIB Conduct of Business Rule 1.04, and will be undertaken consistent with the rules of IMRO and applicable provisions of the Financial Services Act;

(d) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission Rule 3.32, 17 CFR 3.32 (1988);

(e) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

(f) Subject to NFA's stated policy to reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange, consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30; provided, however, that the firm may require its customers resident in the United States to execute the consent attached hereto as Exhibit C concerning the exhaustion of certain mediation or conciliation procedures made available by IMRO prior to bringing an NFA arbitration proceeding; and, provided further, that the firm must undertake to provide the customer with information concerning how to commence such procedures and documentation of the commencement of such procedures pursuant to the consent attached hereto as Exhibit C;

(g) Consents to the release of financial information relating to the firm as specified in the FISMOU, as amended, between, among others, the Commission, SIB and IMRO;

(h) Consents to refuse customers resident in the United States the option of not segregating funds notwithstanding relevant provisions of the United Kingdom regulatory system and otherwise consents to provide all customers resident in the United States no less stringent regulatory protection than United Kingdom customers under all relevant provisions of United Kingdom law;

(i) In the event a firm is using an approved bank undertaking to meet any part of the financial resources requirement of IMRO and the value of segregated funds held by the firm on behalf of customers resident in the United States exceeds 12.5 times the absolute minimum financial resource requirement applicable to the firm, consents to report on its quarterly financial statement to IMRO, or at such other times as may be specified by IMRO, the value of funds required to be segregated on behalf of customers resident in the United States; and

(j) Undertakes to comply with the applicable provisions of United Kingdom law and IMRO rules which form the basis upon which this exemption from certain provisions of the Act is granted.

This Order will become effective as to any firm designated hereunder the later of thirty days after publication of the Order in the **Federal Register** or after filing of the consents hereinabove required. Upon filing of any notice required under paragraph (1)(b) as to any firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and IMRO.

This Order is issued pursuant to Commission Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to

[5] *See* the Addendum to the FISMOU attached hereto as Exhibit A.

[6] *See* Side Letter to the UK/US MOU attached hereto as Exhibit B.

which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. For example, the relief granted to a specific firm may be suspended upon the firm's failure to provide access to its books and records. If necessary, provisions will be made for servicing existing client positions.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules and will make necessary adjustments if appropriate.

Issued in Washington, DC, on May 15, 1989.

Jean A. Webb,

Secretary of the Commission.

Exhibit A—Addendum Dated May 15, 1989, to the Financial Information Sharing Memorandum of Understanding

1. We refer to the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on 1 September 1988 by, among others, the Securities and Investments Board ("SIB"), Commodity Futures Trading Commission ("CFTC"), United Kingdom Self-Regulating Organisations ("SROs") and United States SROs, as defined in the FISMOU.

2. We further refer to the Order of the CFTC dated May 15, 1989, granting an exemption under Rule 30.10 of the CFTC's rules to the SIB and certain U.K. SROs and to those firms which they designate pursuant to which the CFTC will, among other things, defer to the financial regulation rules of the relevant U.K. regulator.

3. In consideration of the foregoing, and of the need to share financial information from time to time and on a regular basis with respect to firms in the United Kingdom granted an exemption under Rule 30.10, the undersigned parties hereby agree to this Addendum as permitted by paragraph (2) of Article VI of FISMOU:

(a) In accordance with paragraph 3(c) of Article III of FISMOU, the SIB or the relevant U.K. SRO will use its best efforts to notify and discuss with the CFTC if it becomes aware, through a U.K. SRO or otherwise, of any information which in its respective judgment materially and adversely affects the financial or operational viability of any firm domiciled in the United Kingdom and doing business in the United States under a comparability exemption granted pursuant to Rule 30.10 of the CFTC's rules.

(b) The SIB or the relevant U.K. SRO will provide to the CFTC, commencing with the first filing due after the effective date of this Addendum, as promptly as practicable after receipt of the relevant report, the following information with respect to a firm domiciled in the United Kingdom doing business in the United States under a comparability exemption granted pursuant to Rule 30.10:

(i) Copies of: (A) On an annual basis, a statement containing, with respect to such firm, financial information analogous to that set forth in the cover sheet required to be provided by U.S. SROs to the relevant U.K. regulator pursuant to Article III of FISMOU concerning an FCM; or (B) the annual audited financial statement, including the annual auditors report, required under the rules of the SIB or the relevant U.K. SRO. In either case, the SIB or relevant U.K. SRO will represent that it has reviewed the annual audited financial statement and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the financial resources requirements of the SIB or relevant U.K. SRO promulgated under the FSA. If the SIB or relevant U.K. SRO provides the cover sheet in accordance with (A) above, the SIB or relevant U.K. SRO will provide a copy of the firm's annual audited financial statement upon request of the CFTC.

(ii) Details of any notifications received under the rules of the SIB or relevant U.K. SRO regarding any breach of the financial resources requirements.

(c) The SIB or relevant U.K. SRO will provide the Commission simultaneously with its notification of the sponsorship of a firm domiciled in the United Kingdom wishing to do business in the United States under a comparability exemption pursuant to Rule 30.10 with the following information:

Copies of: (i) A statement containing, with respect to such firm, financial information analogous to that set forth in the cover sheet required to be provided by U.S. SROs to the relevant U.K. regulator pursuant to Article III of FISMOU concerning an FCM; or (ii) the most recent annual audited financial statement, including the annual auditors report, required under the rules of the SIB or the relevant U.K. SRO. In either case, the SIB or relevant U.K. SRO will represent that it has reviewed the annual audited financial statement and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the financial resources requirements of the SIB or relevant U.K. SRO promulgated under the FSA. If the SIB or relevant U.K. SRO provides the cover sheet in accordance with (i) above, the SIB or relevant U.K. SRO will provide a copy of the firm's annual audited financial statement upon request of the CFTC.

(d) The CFTC may make information received pursuant to this Addendum available to National Futures Association.

(e) Except as otherwise provided herein, the provisions of the FISMOU shall apply to this Addendum, to the extent relevant.

Signed this 15th day of May 1989.

United States Commodity Futures Trading Commission,
by Wendy L. Gramm.

National Futures Association,
by Robert K. Wilmouth.

Securities and Investments Board,
by David Walker.

The Securities Association,
by John Young.

The Association of Futures Brokers and Dealers Limited,
by Phillip Thorpe.

Investment Management Regulatory Organisation Ltd.,
by J.A. Morgan.

Exhibit B—Side Letter Relating to UK/US MOU

1. We refer to the Memorandum of Understanding between the Department of Trade and Industry, the Securities and Exchange Commission and the Commodity Futures Trading Commission ("CFTC") on the exchange of information relating to securities and futures and options which was signed on 23 September 1986, as supplemented on 22 November 1988 by the Memorandum Relating to UK/US MOU (hereinafter collectively referred to as "UK/US MOU") adding the Securities and Investments Board Ltd. ("SIB") as a signatory.

2. Whereas the SIB is performing important regulatory functions delegated to it under the Financial Services Act 1986 ("FSA"), including compliance and surveillance functions and oversight of compliance and surveillance functions performed by certain United Kingdom self regulating organisations related to firms engaged in investment business in the United Kingdom;

3. In consideration of the SIB's regulatory responsibilities with respect to persons and Recognized Investment Exchanges authorized to do investment business pursuant to section 27(2) and 37 of the FSA, respectively and the CFTC's rules governing foreign futures and option transactions in Part 30 of its rules which, among other things, contains procedures for the CFTC to approve certain foreign option products and for granting specified firms in foreign jurisdictions engaged in transactions subject to Part 30 of the CFTC's rules an exemption from the application of certain of the requirements thereunder based upon a determination that the regulatory system in effect in the foreign jurisdiction is comparable to the system in effect in the United States;

4. In order to ensure that the arrangements under the UK/US MOU will continue to operate effectively having regard to the regulatory requirements in effect in the United States and the United Kingdom; desiring to facilitate the international trading in and efficient international clearance and settlement of futures and options; and

recognizing the need for the establishment of exchanges of information as needed for the proper monitoring and operation of such trading, clearing and settlement;

The SIB and CFTC understand the following:

(a) This Side Letter concerns requests for information (including any request for immediate access to or delivery of the books and records of firms) required for the purposes of enabling or assisting the SIB and the CFTC to fulfill their respective functions relating to monitoring compliance with applicable Part 30 rules and the terms and conditions of Orders issued by the CFTC under Part 30 of its rules:

(i) To specified firms in the United Kingdom exempting such firms from the application of certain of the Part 30 rules; or

(ii) Relating to the offer or sale in the United States of certain United Kingdom option products.

(b) As modified by paragraphs (c), (d), (e) and (f) below, the provisions of the UK/US MOU will be deemed to apply to any request for information made under this Side Letter to monitor compliance with the provisions mentioned in paragraph (a) above which, for the purposes of this Side Letter, will be deemed to be legal rules or requirements within the meaning of the UK/US MOU.

(c) Any request for information made under this Side Letter will be deemed to be in compliance with paragraphs 7(a), (b) and (d) of the UK/US MOU if such request states that it is so made and satisfies the following requirements:

(i) Where ever possible it shall be in writing but in case of urgency it may be oral, but confirmed in writing within 10 days.

(ii) It shall clearly specify the following:

(A) The information required and, if known, the identity of the person or persons whose compliance with a legal rule or requirement is being monitored;

(B) The general purpose for which the information is sought, indicating in particular the legal rule or requirement pertaining to the matter which is the subject of the request;

(C) The ground for concern giving rise to the request.

(iii) The requested information must be reasonably related to the purpose for which the information is sought.

(iv) Where it is apparent to the SIB or CFTC when requesting the information that another person may obtain such information for a purpose other than monitoring, enforcing or securing compliance with the legal rule or requirement, to the extent permitted by the laws of the United Kingdom, when the SIB is requesting the information, or United States, when the CFTC is requesting the information, the SIB or CFTC must disclose the particulars of the person and his interest.

(d) For the purposes of requests made under this Side Letter, the contact officers will be Director, Futures and Options Division, SIB, and Director, Division of Trading and Markets, CFTC.

(e) Where an investigation as contemplated by paragraph 8 of the UK/US MOU is initiated on the basis of information provided pursuant to a request under this Side Letter, the Director of Enforcement, SIB, or the Director, Division of Enforcement, CFTC, will give notice to his counterpart at the CFTC or SIB.

(f) Information received pursuant to a request under this Side Letter may only be used consistent with the UK/US MOU; or in connection with any Commission Order relating to United Kingdom firms or products issued pursuant to Part 30 of the Commission rules; provided, however, in the latter case, the CFTC will, to the extent practicable, give prior notice of such action to the SIB.

(g) This Side Letter will become effective as to any Order relating to United Kingdom firms or products issued under Part 30 of the Commission's rules upon the issuance by the Commission of such an Order.

Signed this 15th day of May 1989.

Securities and Investments Board

M.B. Gittins,

Director—Futures and Options Division.

Commodity Futures Trading Commission

Andrea M. Corcoran,

Director, Division of Trading and Markets.

Exhibit C—Form of Consent

In the event that a dispute arises between you [name of customer resident in the United States] and [name of United Kingdom firm] with respect to transactions subject to Part 30 of the Commodity Futures Trading Commission's rules, various forums may be available for resolving the dispute, including courts of competent jurisdiction in the United States and United Kingdom and arbitration programs made available both in the United States and United Kingdom.

In the event you wish to initiate an arbitration proceeding against this firm to resolve such dispute under the applicable rules of the National Futures Association ("NFA") in the United States, you hereby consent that you will first commence mediation or conciliation in accordance with such procedures as may be made available by the relevant United Kingdom regulator, information on which is provided to you herewith. The outcome of such United Kingdom mediation or conciliation is nonbinding. You may subsequently accept this resolution, or you may proceed either to binding arbitration under the rules of the relevant United Kingdom regulator or to binding arbitration in the United States under the rules of NFA. In this connection, you should know that NFA will reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange. If you accept the mediated or conciliated resolution or elect to proceed to arbitration, or to any other form of binding resolution, under the rules of the relevant United Kingdom regulator or foreign exchange, you will be precluded from subsequently initiating an arbitration proceeding at NFA.

You may initiate an NFA arbitration proceeding upon receipt of documentation from the relevant United Kingdom regulator:

(i) Evidencing completion of the mediation or conciliation process and reminding you of your right of access to NFA's arbitration proceeding; or

(ii) Representing that more than nine months have elapsed since you commenced the mediation or conciliation process and that such process is not yet complete and reminding you of your right of access to NFA's arbitration proceeding.

The documentation referred to above must be presented to NFA at the time you initiate the NFA arbitration proceeding. NFA will exercise its discretion not to accept your demand for arbitration absent such documentation.

By signing this consent, you are not waiving any other rights to any other legal remedies available under law.

Customer

Date

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a (1982).

2. Appendix C to Part 30 is amended by adding the following entry to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

* * * * *

Firms designated by the Investment Management Regulatory Organisation. FR date and citation: May 19, 1989; 54 FR ———.

[FR Doc. 89-12090 Filed 5-18-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F-0082]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a sanitizing solution composed of decanoic acid, octanoic

acid, lactic acid, phosphoric acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid or 1, 2-octanedisulfonic acid, the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine, and with FD&C Yellow No. 5 as an optional ingredient. The sanitizing solution is to be used on food-processing equipment and utensils including dairy-processing equipment. This action responds to a petition filed by Economics Laboratory, Inc.

DATES: Effective May 19, 1989; written objections and requests for a hearing by June 19, 1989.

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

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 8, 1985 (50 FR 9521), FDA announced that a petition (FAP 5H3842) had been filed by Economics Laboratory, Inc., St. Paul, MN 55102 (the name and address of the company have been changed to Ecolab Inc., Ecolabl Center, St. Paul, MN 55102), proposing that the food additive regulations be amended to provide for the safe used of decanoic acid, octanoic acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid, and the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine as components of sanitizing solutions to be use on food-processing equipment and other food-contact articles.

Additionally, in a subsequent notice published in the **Federal Register** of January 26, 1989 (54 FR 3853), FDA amended the previous filing notice to make clear that the sanitizing solution also contains lactic acid, phosphoric acid, FD&C Yellow No. 5, and that the mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid may also contain 1,2-octanedisulfonic acid.

FDA has reviewed the safety of the individual chemicals that are components of the sanitizing solution, as well as, the safety of the starting materials. The condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine may contain minute amounts of ethylene oxide and 1,4-dioxane as byproducts of its production. These chemical impurities have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as ethylene oxide and 1,4-dioxane, are commonly found as contaminants in chemical products, including most food additives.

I. Determination of Safety

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

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

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer but contains a carcinogenic impurity may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

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

II. Safety of Petitioned Use

Sanitizing solutions are mixtures of chemicals. Each listed component in a sanitizing solution must have a functional effect. The subject sanitizing solution contains two short-chain fatty acids—decanoic acid and octanoic acid. In addition, the solution contains phosphoric acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid or 1, 2-octanedisulfonic acid, lactic acid, FD&C Yellow No. 5, and the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine. The functions of each component are described below.

A. Short Chain Fatty Acids

The two short chain fatty acids, decanoic acid and octanoic acid, are antimicrobial agents in the subject sanitizing solution and are used in a regulated sanitizing solution listed in 21 CFR 178.1010 (b)(27) and (c)(22). On the basis of the data submitted in support of that regulated use, and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of these fatty acids in the subject sanitizing solution is safe.

B. Phosphoric Acid

Phosphoric acid functions as a pH stabilizer in the subject sanitizing solution. Phosphoric acid is listed in 21 CFR 182.1073 as generally recognized as safe (GRAS) for direct use in food. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution and other available data, FDA finds that the use of phosphoric acid in the subject sanitizing solution is safe.

C. A Mixture of 1-Octanesulfonic Acid and 1-Octanesulfonic-2-Sulfinic Acid, or 1,2-Octanedisulfonic Acid (OSA Mixture)

This OSA mixture functions as a surface-active agent in the subject sanitizing solution. The mixture is a 40-percent aqueous solution of 1-octanesulfonic acid (25 percent minimum) and 1-octanesulfonic-2-sulfinic acid or 1,2-octanedisulfonic acid (9.0 percent maximum). This mixture is not regulated for use in sanitizing solutions. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of this mixture in the subject sanitizing solution is safe.

D. Lactic Acid

Lactic acid assists in stabilizing the subject sanitizing solution formulation. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution and other available data, FDA finds that the use of lactic acid in the subject sanitizing solution is safe.

E. FD&C Yellow No. 5

FD&C Yellow No. 5 functions as a colorant in the subject sanitizing solution and should be used at levels intended to perform its functional effect. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution and other available data, FDA finds that the use of FD&C Yellow No. 5 in the subject sanitizing solution is safe.

F. Ethoxylated Emulsifier

FDA estimates that the petitioned use of the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine will result in extremely low levels of exposure to this additive. This substance functions as a defoaming agent in the subject sanitizing solution. The agency has calculated the estimated intake of this substance based on the probable concentration of the additive in the daily diet from its use on food-processing equipment and utensils. The estimated daily intake for the additive is 7.0 micrograms per person per day for a 60-kilogram person (2.3 parts per billion of the total daily diet).

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in very low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. However, the petitioner did submit data from an acute toxicity test in rats. No adverse effects were reported in this study.

As stated above, the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine may contain 1,4-dioxane and ethylene oxide, substances that have been shown to cause cancer in test animals. These impurities may be present as a result of manufacturing procedures used to produce this emulsifier. Because the additive has not been shown to cause cancer, however, the anticancer clause does not apply to it.

FDA has evaluated the safety of this ethoxylated emulsifier under the general safety clause, using risk assessment procedures to estimate the upper bound risk presented by 1,4-dioxane and ethylene oxide that may be present as impurities in this additive. Based on this evaluation, FDA has concluded that the chemical is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018, 13019; April 2, 1984). The risk evaluation of the carcinogenic impurities ethylene oxide and 1,4-dioxane has two aspects: (1) Assessment of the worst case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

1. *1,4-Dioxane.* Based on the fraction of the daily diet that may be in contact with surfaces and articles containing residues of the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymer with one mole of ethylenediamine, as well as the level of 1,4-dioxane that may be present in this additive, FDA estimated that the hypothetical worst case exposure to 1,4-dioxane from the use of this additive in the sanitizing solution would not exceed 0.07 nanograms per person per day (Ref. 5). The agency used data in a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer in the sanitizing solution. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that an estimate of the upper bound risk from potential exposure to 1,4-dioxane stemming from the proposed use of the poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine.

Based on a worst case exposure of 0.07 nanograms per person per day, FDA estimates that the upper bound level of individual lifetime risk from potential exposure to 1,4-dioxane from the use of this poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer is 2.5×10^{-12} or less than 1 in 400 billion. Because of the numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that results from the use of this poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer.

2. *Ethylene oxide.* Based on the fraction of the daily diet that may be in contact with surfaces containing the poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine, as well as levels of ethylene oxide that may be present in the additive, FDA estimated the hypothetical worst case exposure to ethylene oxide to be 0.07 nanograms per

person per day (Ref. 5). The agency used data in a carcinogenesis bioassay on ethylene oxide conducted for the Institute of Hygiene, University of Mainz, West Germany (Ref. 3), to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of this poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer. The results of the bioassay on ethylene oxide demonstrated that this material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinoma of the forestomach and carcinoma in situ of the glandular stomach.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed the bioassay and other relevant data available in the literature and concluded that this information on ethylene oxide supported the finding of carcinogenicity. The committee further concluded that an estimate of the upper bound level of lifetime human cancer risk from potential exposure to ethylene oxide could be calculated from the bioassay.

Based on a worst case exposure of 0.07 nanograms per person per day, FDA estimates, using the linear proportional model, that the upper bound level of individual lifetime risk from potential exposure to ethylene oxide from the use of poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine is $1.3X10^{-10}$, or less than 1 in 8 billion. Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that results from the use of the poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer.

G. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of the ethylene oxide and 1,4-dioxane impurities in the poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer. The agency finds that a specification is not necessary for the following reasons: (1) Because of the levels at which ethylene oxide and 1,4-dioxane are present as byproducts in the production of these additives, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper bound level of lifetime risk from exposure, even under worst case assumptions, is very low, less than 1 in 400 billion for 1,4-dioxane and less than 1 in 8 billion for ethylene oxide.

H. Conclusion of Safety

FDA has evaluated the available toxicity data and the exposure calculation for the components of the sanitizing solution and has determined that they are safe and effective for their proposed use.

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

III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the amended notice of filing for FAP 5H3842 (54 FR 3853). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

IV. References

The following information has been placed in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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

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

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI-CG-TR-80, 1978.

5. Memorandum dated June 20, 1986, from Food Additive Chemistry Evaluation Branch to Indirect Additives Branch, "Exposure to Ethylene Oxide (EO) and 1,4-Dioxane (DX)."

V. Filing of Objections

Any person who will be adversely affected by this regulation may at any time on or before June 19, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection.

Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

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

2. Section 178.1010 is amended by adding new paragraphs (b)(36) and (c)(31) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(36) The sanitizing solution contains decanoic acid (CAS Reg. No. 334-48-5); octanoic acid (CAS Reg. No. 124-07-2); lactic acid (CAS Reg. No. 050-21-5); phosporic acid (CAS Reg. No. 7664-38-2); a mixture of 1-octanesulfonic acid

(CAS Reg. No. 3944–72–7), and 1-octanesulfonic-2-sulfinic acid (CAS Reg. No. 113652–56–5) or 1,2-octanedisulfonic acid (CAS Reg. No. 1934210); the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine (CAS Reg. No. 11111–34–5); and the optional ingredient FD&C Yellow No. 5 (CAS Reg. No. 001934210). In addition to use on food-processing equipment and utensils, this solution may be used on dairy-processing equipment.

(c) * * *

(31) Solutions identified in paragraph (b)(36) of this section shall provide, when ready for use, at least 29 parts per million and not more than 58 parts per million decanoic acid; at least 88 parts per million and not more than 176 parts per million of octanoic acid; at least 69 parts per million and not more than 138 parts per million of lactic acid; at least 256 parts per million and not more than 512 parts per million of phosphoric acid; at least 86 parts per million and not more than 172 parts per million of 1-octanesulfonic acid; at least 51 parts per million and not more than 102 parts per million of 1-octanesulfonic-2-sulfinic acid or 1,2-octanedisulfonic acid; and at least 10 parts per million and not more than 20 parts per million of the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine. The colorant adjuvant FD&C Yellow No. 5 shall not be used in excess of the minimum amount required to accomplish the intended technical effect.

* * * * *

Dated: May 10, 1989.

Arvin P. Shroff,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–11992 Filed 5–18–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF EDUCATION

34 CFR Part 81

RIN 1880–AA35

General Education Provisions Act—Enforcement

AGENCY: Department of Education.

ACTION: Final rule; correction.

SUMMARY: On May 5, 1989, final regulations for 34 CFR Part 81, titled "General Education Provisions Act—Enforcement," were published at 54 FR 19512. The regulations are corrected as follows:

1. On page 19515, in the second column, under § 81.21 *Measure of recovery,* the first line is corrected to read "(b) In the case of a State or".

2. On page 19518, in the first column, the second line of paragraph (3) *Ineligible beneficiaries* is corrected to read "example in paragraph (2),".

3. On the same page, in the same column, the second line of paragraph (4) *Ineligible beneficiaries* is corrected to read "example in paragraph (2),".

FOR FURTHER INFORMATION CONTACT: Barry W. Stevens, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue, SW, Room 4091, FOB–6, Washington, DC 20202;

Telephone: (202) 732–2730.

Authority: 20 U.S.C. 1221e–3(a)(1), 1234–1234i, 3474(a), unless otherwise noted.

Note: For an additional correction to the document cited in this correction, see the corrections sections of this issue.

Dated: May 15,1989.

Michelle Easton,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 89–12021 Filed 5–18–89; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 750

[OPTS–60007A; FRL–3510–2]

Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending its procedural regulations, 40 CFR Part 750, Subpart A, to make it clear that the Agency believes a rulemaking proceeding under TSCA section 6 (15 U.S.C. 2605) may begin with publication in the **Federal Register** of a notice of proposed rulemaking (NPRM), an advance notice of proposed rulemaking (ANPR), or notice of other appropriate action, such as a formal regulatory investigation designed to lead to issuance of rules within a reasonable time. This clarification is necessary because of an opinion in United States District Court on October 24, 1986, in the case of *Service Employees International Union (SEIU)* v. *Thomas* (D.D.C., No. 84–2790).

DATE: This rule shall become effective on July 3, 1989.

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

SUPPLEMENTARY INFORMATION: On June 17, 1987, the Agency proposed this amendment at 52 FR 23054. EPA solicited public comment on the proposed rule, even though it was procedural in nature and opportunity for public comment was not required. Comments were received and analyzed. The rule is now promulgated unchanged from proposal.

I. Background and Rationale

Section 21 of TSCA, 15 U.S.C. 2620, provides that any person may petition EPA, for among other things, the issuance, amendment, or repeal of a rule under section 4, 6, or 8 of TSCA, 15 U.S.C. 2603, 2605, or 2607. EPA may grant or deny the petition within 90 days. In pertinent part, section 21 provides that, if EPA grants the petition, the Agency "shall promptly commence an appropriate proceeding in accordance with section 4, 6, or 8." If EPA denies the petition, the petitioner may file a civil suit in United States District Court to compel the initiation of appropriate proceedings. This suit must be filed within 60 days of the denial, or within 60 days of the end of the 90-day period if EPA does not grant or deny within the 90-day period. In the case of a petition to initiate a proceeding for the issuance of a rule, as opposed to amendments or repeals, the petitioner is entitled to a *de novo* proceeding.

40 CFR Part 750, Subpart A—"Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act," sets forth the Agency's requirements for informal rulemaking under TSCA section 6(a). This includes such Agency obligations as the need to issue a NPRM, provide opportunity for public comment, establish a rulemaking docket, and provide opportunity for limited cross-examination. The original version of § 750.2(a) stated:

> (a) Each rulemaking subject to this part shall begin with the publication of a Notice of Proposed Rulemaking in the **Federal Register.**

EPA stated in the preamble to the proposed rule that it views this language merely as a statement that the procedural rules of Part 750, Subpart A, apply after the issuance of an NPRM. The United States District Court, however, in an October 24, 1986, opinion in *SEIU* v. *Thomas* rejected EPA's view and assigned a more pervasive meaning to 40 CFR 750.2(a). The court determined

that 40 CFR 750.2(a) requires a TSCA section 6 proceeding to begin with a NPRM. Thus, under the court's interpretation, if EPA grants a TSCA section 21 citizen's petition for a section 6 rule, the Agency would need to issue an NPRM.

EPA believes the court's interpretation of 40 CFR 750.2(a) was incorrect and unduly restrictive. Accordingly, EPA is amending 40 CFR 750.2(a) to provide explicitly that a section 6 proceeding may begin by the publication of an NPRM, an ANPR, or notice of other appropriate action, such as a formal regulatory investigation designed to lead to issuance of a rule within a reasonable time. This is consistent with EPA's longstanding interpretation of its requirements under the procedural rules.

Rulemaking of necessity includes the information-gathering process that begins well before the issuance of a proposed rule. Under section 6(a) of TSCA, the Agency needs extensive data to make a number of findings regarding toxicity of a chemical substance to be regulated, potential exposure to the chemical substance, and the costs of reducing risks from that substance. Federal courts have acknowledged that rulemaking commences before the publication of a notice of proposed rulemaking. See, for example, *Natural Resources Defense Council* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984), where the court found that EPA may use an ANPR to initiate a rulemaking proceeding under section 4 of TSCA. Further, EPA should not be limited in its discretion in responding in section 21 petitions. Section 21 provides only 90 days to respond to a petition. Only in rare circumstances could EPA make a commitment, within that time, that a proposed rule should be issued.

II. Response to Comments

Comments taking issue with the proposed rule were submitted by a number of labor unions and environmental groups. The unions and environmental groups argue that, when EPA grants a section 21 petition to issue rules under section 6, the Agency must issue a proposed rule and, therefore, the Agency should not amend its regulation. EPA disagrees with these comments for the reasons stated above and in briefs, included in this rulemaking record, filed in *Service Employees International Union* v. *Thomas* (D.D.C. No. 84–2790).

However, after consideration of these comments and its own position, EPA has decided that this dispute need not be resolved in order to issue a final rule in this proceeding. Rather, the amendment only serves to divorce 40 CFR Part 750 from this dispute by removing any ambiguity with respect to the language in 40 CFR 750.2(a). That section as amended cannot be interpreted as an EPA statement either that a grant of a section 21 petition must lead to a proposed rule or that a section 6 proceeding must begin with a proposed rule. Whether TSCA as a whole may be interpreted in that manner must await other legal proceedings.

III. Administrative Record

The Administrative Record for this rulemaking is available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., Washington, DC.

IV. Regulatory Assessment Requirements

This final rule has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. It is not a "major" rule for purposes of that Executive Order, since it will not have any significant effect on the economy.

Under the Regulatory Flexibility Act, 5 U.S.C. 605, EPA has determined that this rule would not have a significant impact on a substantial number of small entities. There is no reason to believe that it will have any impact on small entities.

This rule contains no information collection requirements as determined under provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 750

Administrative practice and procedure, Environmental protection, Hazardous materials.

Dated: May 10, 1989.

William K. Reilly,

Administrator.

Therefore, 40 CFR Part 750 is amended as follows:

PART 750—[AMENDED]

1. The authority citation for Part 750 continues to read as follows:

Authority: 15 U.S.C. 2605.

2. Section 750.2 is amended by revising paragraph (a) to read as follows:

§ 750.2 Notice of proposed rulemaking.

* * * * *

(a) Each rulemaking becomes subject to this part with the publication of a Notice of Proposed Rulemaking in the **Federal Register**. A proceeding under section 6 of the Toxic Substances Control Act may begin, as appropriate, with the publication in the **Federal Register** of a Notice of Proposed Rulemaking, an Advance Notice of Proposed Rulemaking, or notice of other action, such as a formal regulatory investigation designed to lead to issuance of rules within a reasonable time.

* * * * *

[FR Doc. 89–12042 Filed 5–18–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8365

RIN 1004–AB60

Public Health, Safety and Comfort; Amendment of Regulations on Rules of Conduct of Visitors to the Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This rulemaking action addresses the problem of cultivation, manufacture, delivery, distribution, trafficking or possession of controlled substances taking place on the public lands by making those activities subject to criminal penalties.

EFFECTIVE DATE: June 19, 1989.

ADDRESS: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Walter Johnson, (202) 653–8815.

SUPPLEMENTARY INFORMATION: When regulations establishing actions which would be subject to criminal penalties were originally promulgated, the drug problem had not spread to the public lands. Since that time, law enforcement employees as well as other employees of the Bureau of Land Management have been encountering increasing incidents of cultivation, manufacture, delivery, distribution, trafficking or possession of controlled substances. The frequency of such illegal activities is increasing, which impedes the proper management and use of the public lands. On January 12, 1989, a proposed rulemaking was published with a 30-day comment period (54 FR 1194–1195). During the comment period, one comment supporting the proposed rule was received from the State of Utah. Therefore, this final rule is published without change or revision to the rule as proposed.

This action allows Bureau of Land Management law enforcement employees to address these violations of law appropriately as they carry out their other law enforcement duties.

The prinicpal author of this rulemaking is Walter Johnson, Chief, Law Enforcement and Resource Protection Operations Staff, assisted by Deborah Lanzone of the Division of Legislation and Regulatory Management, both of the Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects for 43 CFR Part 8360

Penalties, Public lands, Recreation and recreation areas.

For the reasons set out in the preamble, 43 CFR Part 8365 is amended as set forth below.

PART 8360—[AMENDED]

1. The authority citation for 43 CFR Part 8360 continues to read as follows:

Authority: 43 U.S.C. 1701 et seq. 43 U.S.C. 3152, 16 U.S.C. 1281c, 16 U.S.C. 670 et seq., 16 U.S.C. 4601–62, 16 U.S.C. 1241 et seq.

2. 43 CFR 8365.1–4 is amended by redesignating the text of the section as paragraph (a) and by redesignating paragraphs (a) through (f) as paragraphs (a) (1) through (6) respectively and adding paragraph (b) to read:

§ 8365.1–4 Public health, safety and comfort

* * * * *

(b) No person shall engage in the following activities on the public lands:

(1) Cultivating, manufacturing, delivering, distributing or trafficking a controlled substance, as defined in 21 U.S.C. 802(6) and 812 and 21 CFR 1308.11 through 1308.15, except when distribution is made by a licensed practitioner in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted or constructive transfer of a controlled substance whether or not there exists an agency relationship; or

(2) Possessing a controlled substance, as defined in 21 U.S.C. 802(6) and 812 and 21 CFR 1308.11 through 1308.15, unless such substance was obtained, either directly or pursuant to a valid prescription or order or as otherwise allowed by Federal or State law, by the possessor from a licensed practitioner acting in the course of professional practice.

Michael A. Poling,

Deputy Assistant Secretary of the Interior.

April 24, 1989.

[FR Doc. 89–12088 Filed 5–18–89; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81–11; Notice 26]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendment.

SUMMARY: The purpose of this amendment is to correct an error in the Note to Figure 3–1 of the Federal motor vehicle safety standard on lighting.

DATE: The amendment is effective June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA (202–366–5280).

SUPPLEMENTARY INFORMATION: On June 2, 1983, NHTSA amended Motor Vehicle Safety Standard No. 108 to allow the use of replaceable bulb headlamps (48 FR 24690). As part of that amendment, Figure 3–1 Interchangeability Drawing Headlamp Bulb Assembly was adopted. In the Note for that Figure, a general tolerance of plus or minus 1 degree was stated to apply to all angular dimensions specified in Figure 3.

When the agency responded to petitions for reconsideration of the June rule on September 30, 1983 (48 FR 44815), Figure 3–1 was republished. However, in redrawing the artwork for Figure 3–1, the degree symbol mistakenly became the percent symbol, so that the general tolerance became one of plus or minus one percent. This error passed unnoticed until recently. NHTSA is therefore publishing this technical amendment to correct it. Because the amendment corrects a technical error and neither imposes nor relieves a burden on any regulated person, it may be published without prior notice or comment thereon (5 U.S.C. 553(b)). For the same reason, it is found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest, and the amendment is effective June 19, 1989.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 115 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

The Note to Figure 3–1 of 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* is revised to read as follows:

Note: Unless otherwise specified, a general tolerance of plus or minus .004 in. (0.10 mm) shall apply to all linear dimensions and plus or minus 1 degree shall apply to all angular dimensions specified in Fig. 3.

Issued on: May 15, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–11988 Filed 5–15–89; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 54, No. 96
Friday, May 19, 1989

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1475

Emergency Livestock Assistance

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations set forth at 7 CFR Part 1475 to allow eligible Indian livestock owners to participate in livestock feed programs at the same time as they are receiving donated Commodity Credit Corporation grain under the Indian Acute Distress Donation Program. At the present time, eligible Indians may receive assistance under either the Livestock Feed Program or the Indian Acute Distress Donation Program but not under both programs at the same time.

DATES: Comments must be received on or before August 17, 1989.

ADDRESSES: Send comments on this proposed rule to: Director, Emergency Operations and Livestock Programs Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submission made pursuant to this proposed rule will be made available for public inspection in Room 4089A South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Clarence B. Domire, Program Specialist, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447-7673.

SUPPLEMENTARY INFORMATION:

This proposed rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulations 1512-1 and Executive Order 12291 and has been classified "not major". It has been determined that these program provisions will not result in an annual effect on the economy of $100 million or more.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Commodity Loans and Purchases, Number 10.051 as found in the Catalog of Federal Domestic Assistance.

An Environmental Evaluation with respect to the Livestock Feed Program has been completed. It has been determined that this action is not expected to have any significant impact on the quality of human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

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

Background

The regulations at 7 CFR part 1475 currently set forth the regulations used to administer livestock feed programs. These programs are authorized by section 407 of the Agricultural Act of 1949 (the 1949 Act) as amended by the Disaster Assistance Act of 1988. Sections 605, 606, and 607 of the 1949 Act provide that the Secretary of Agriculture shall make one or more of certain specified programs available to eligible livestock producers if a livestock emergency exists in a State, county, or area. These programs include the Emergency Feed Program (EFP) whereby livestock producers receive cost share payment on purchased feed and the Emergency Feed Assistance Program (EFAP) whereby livestock producers can purchase Commodity Credit Corporation (CCC)-owned grain at reduced prices.

The Indian Acute Distress Donation Program (IADDP) is administered in accordance with section 407 of the 1949 Act; the CCC Charter Act, as amended; and Executive Order 11336.

Authority to implement the program is delegated to the Administrator, Agricultural Stabilization and Conservation Service. The Bureau of Indian Affairs, Department of the Interior, may request the program be implemented upon a determination that the economic distress of the needy members of an Indian tribe is materially increased by severe drought, flood, hurricane, blizzard or other uncontrollable catastrophe affecting land utilized by members of such tribe for grazing livestock. Assistance is in the form of donated CCC-owned feed grains with freight and handling paid by CCC to one or more central distribution points. The program is administered at the local level by the Tribal Council under the supervision of local authorities of the Bureau of Indian Affairs, Department of the Interior.

At the present time, Indian livestock owners who are eligible to receive assistance under both EFP or EFAP and the IADDP must choose to participate in the IADDP or in the EFP or EFAP. Under the EFP or EFAP, eligible livestock owners can receive assistance on up to 10 pounds of feed grain equivalent per day per animal unit. Under EFP, they can receive up to 50 percent cost share on purchases of feed grain, roughage, or mixed feeds. Under the EFAP, eligible livestock producers can purchase CCC-owned feed grains at 50 percent of the posted county price. Under the IADDP eligible Indian livestock owners can receive 4 pounds of donated CCC-owned feed grain per day per animal unit.

Representatives from various Indian tribes have met with members of their congressional delegations and with USDA representatives regarding participation in both the IADDP and in the EFP or EFAP. The Indian tribal representatives stated that their members should be able to participate in the IADDP and in the EFP or EFAP at the same time. It is the opinion of these representatives that the purpose of the IADDP is not to replace other existing CCC livestock feed programs but rather the purpose of the IADDP is to help

alleviate the economic distress of needy tribal members.

This proposed rule would provide that eligible Indian livestock owners could receive 4 pounds of feed grain under the IADDP and could also receive 6 pounds of feed grain equivalent under the EFP or EFAP provided they met the eligibility requirements for those programs. With this combination, eligible Indian livestock owners could obtain a total of 10 pounds of feed grain equivalent per animal unit per day, 4 pounds of donated feed grain under the IADDP and 6 pounds of feed grain equivalent under the EFP or EFAP.

This proposed rule provides that any donated grain received by an eligible Indian livestock owner under the IADDP will not be considered as feed on hand in determining the Indian livestock producers eligibility to participate in the EFP or EFAP.

This proposed rule also provides that, for those Indian livestock owners who are receiving 4 pounds of feed grain per day per animal unit under the IADDP, the daily allowance under the EFP and EFAP will be 6 pounds per day per animal unit or lesser amount as may be determined by the State or county ASC committee.

The effect of this proposed rule is that it provides the eligible Indian livestock owner operating livestock on reservation's approved for the IADDP 10 pounds of feed grain equivalent per animal unit per day. That is 4 pounds of donated feed and the opportunity to purchase 6 pounds of feed grain equivalent and be reimbursed for 50 percent of the cost not to exceed 5 cents per pound or to purchase 6 pounds of CCC-owned grain at 50 percent of the posted county price. The eligible non-Indian or Indian livestock owner with a livestock operation outside the reservation would continue to be eligible for 10 pounds of feed grain equivalent per day per animal unit under either the EFP or EFAP.

List of Subjects in 7 CFR Part 1475

Assistance grant programs—agriculture livestock.

Proposed Rule

Accordingly, Chapter XIV of Title 7 Part 1475, of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 1475—EMERGENCY LIVESTOCK ASSISTANCE

1. The authority citation for Part 1475 is revised to read as follows:

Authority: 7 U.S.C. 1427, and 1471–1471j; 15 U.S.C. 714b and 714c.

2. Section 1475.3 is amended by revising the following definition to read as follows:

§ 1475.3 Definitions.

* * * * *

"Daily allowance" means for all livestock, except fish raised for food, 10 pounds of feed grain equivalent per day per animal unit or lesser amount as determined by the State or county committee. For Indian owned livestock which are eligible for participation in the Indian Acute Distress Donation Program, daily allowance means six pounds of feed grain equivalent per day per animal unit or lesser amount as determined by the State or county committee. The daily allowance for fish raised for food shall be one percent of the average weight of all fish raised for food owned by the producer.

* * * * *

2. Section 1475.6 is amended by revising paragraphs (d)(5), (e)(13), and (g)(1)(i)(A) to read as follows.

§ 1475.6 Application and approval.

* * * * *

(d) * * *

(5) Any loss of production otherwise computed shall be reduced due to the receipt of other government benefits which are paid to the owner for livestock feed normally grown by the owner. No reduction in loss of production shall be made for CCC-owned grain that is donated to eligible Indian livestock owners under the IADDP. For 1988, no cost share assistance shall be made on loss of production on the same loss for which the producer received a disaster payment in accordance with Part 1477 of the title.

(e) * * *

(13) Any donated feed on hand, except for feed grain donated under the Indian Acute Distress Donation Program, and

* * * * *

(g)(1)(i) * * *

(A) The smaller of 10 pounds, or 6 pounds for eligible Indian owned livestock if the eligible Indian owner is receiving donated grain under the Indian Acute Distress Donation Program, per day per animal unit, or whatever lesser quantity is determined to be adequate by the State or county committee: times

* * * * *

Signed at Washington, DC, on May 15, 1989.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–12096 Filed 5–18–89; 8:45 am]

BILLING CODE 3410–05–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 89–090]

Importation of Porcine Semen from China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening of comment period for proposed rule; notice of public hearing.

SUMMARY: In a document published in the **Federal Register** on March 28, 1989, we proposed to add specific requirements for the importation of porcine semen from China to the regulations concerning importation of animal semen from countries where rinderpest or foot-and-mouth disease (FMD) exists. In response to several requests, we are scheduling a public hearing on the proposed rule to be held in Cedar Rapids, Iowa. We are also reopening the comment period on the proposed rule.

DATES: Consideration will be given only to comments received on or before June 20, 1989. The public hearing will be held on June 6, 1989, in Cedar Rapids, Iowa.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89–021. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. The public hearing will be held on June 6, 1989, at the Sheraton Inn-Cedar Rapids, Milano Room, 525 33rd Avenue SW., Cedar Rapids, Iowa 52404.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel S. Richeson, Senior Staff Veterinarian, Import-Export Products Staff, Veterinary Services, APHIS, USDA, Room 759, Federal Building, 6505

Belcrest Road, Hyattsville, MD 20782, (301) 436–8144.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 set forth, among other things, the conditions under which animal semen from countries affected with rinderpest or foot-and-mouth disease (FMD) may be imported into the United States. These requirements are contained in § 92.4(d). Generally, these requirements include importation under a United States Department of Agriculture (USDA) permit; inspection of the donor animals by a USDA veterinarian; determination by a USDA veterinarian that the donor animals have not been exposed to or vaccinated against rinderpest or FMD; isolation of the donor animals at a USDA-approved facility beginning prior to semen collection and continuing until blood tests have been completed with negative results; and supervision by a USDA veterinarian of semen collection, preparation for shipment, and shipment.

The Animal and Plant Health Inspection Service (APHIS) has recently received requests to import porcine semen from China. This is the first time importation of porcine semen from China has been requested since the regulations were established. In considering these requests, we believe that requirements in addition to those currently in Part 92 are necessary to ensure that such importations do not present a risk of introducing FMD or other exotic diseases of livestock into the United States.

On March 28, 1989, we published in the **Federal Register** (54 FR 12639–12642, Docket Number 89–021) a proposal to add to Part 92 certain requirements specifically designed for importation of porcine semen from China.

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before April 12, 1989. We subsequently reopened and extended that comment period to consider comments received by May 1, 1989, in another document published in the **Federal Register** on April 14, 1989 (54 FR 14968, Docket Number 89–058).

Public Hearing and Reopening of Comment Period

In response to several requests, we are scheduling a public hearing on the proposed rule. We are also reopening the comment period on the proposed rule to allow consideration of comments received at or in response to the public hearing. The new comment period will close on June 20, 1989.

The public hearing will be held in Cedar Rapids, Iowa. A representative of APHIS will preside at the public hearing, and APHIS representatives will speak at the hearing regarding semen testing procedures, swine quarantine requirements, and other elements that form the technical basis for the proposed rule. Any interested person may appear and be heard in person, by attorney, or by other representative.

The public hearing will begin at 10 a.m. and is scheduled to end at 5 p.m. local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We request that all persons attending the public hearing register with the presiding officer, and fill out a speakers' registration card if they wish to speak, on the morning of the hearing between 9 a.m. and 10 a.m. at the hearing room. Registered speakers will be heard in the order of their registration. Anyone else who wishes to speak at the hearing will be heard after the registered speakers. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

If the number of registered speakers and other participants at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearing is to give interested persons an opportunity for oral presentation of data, views, and arguments. We invite comments concerning the respective responsibilities of the official veterinary organization of the People's Republic of China and of the United States Department of Agriculture, isolation and handling procedures for donor boars, and blood and semen testing requirements for donor boars. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearing, except to clarify or explain provisions of the proposed rule.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 16th day of May 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–12097 Filed 5–18–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–62–AD]

Airworthiness Directives; Aerospatiale Model Nord 262A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Aerospatiale Model Nord 262A series airplanes, which would require a one-time inspection and replacement, if necessary, of certain main landing gear (MLG) shock absorber spherical bearings. This proposal is prompted by a report that the MLG failed to lock and the MLG collapsed on landing. This condition, if not corrected, could result in collapse of the main landing gear.

DATES: Comments must be received no later than July 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–62–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the

Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-62-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Général de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Aerospatiale Model Nord 262A series airplanes. There has been one report where the left-hand main landing gear (MLG) collapsed on landing. It was subsequently determined that this incident was due to seizure of the shock absorber lower spherical bearing. This condition, if not corrected, could lead to collapse of the MLG.

Aerospatiale has issued Nord 262 Service Bulletin No. 32-22, Revision 2, dated January 11, 1988, which describes procedures for inspection of the main landing gear shock absorber and axle arm lower attachment fitting for certain spherical bearings, and replacement, if necessary. The Nord Service Bulletin references ERAM Service Bulletin 32-48 for replacement procedures. The DGAC has classified the Aerospatiale Service Bulletin as mandatory and has issued Airworthiness Directive No. 87-170B addressing this subject.

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

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require a one-time inspection and replacement, if necessary, of certain ERAM main landing gear shock absorbers spherical bearings, in accordance with the service bulletin previously mentioned. Eventual replacement of all separable spherical bearing assemblies with a new type assembly would also be required.

It is estimated that 12 airplanes of U.S. registry would be affected by this AD, that it would take approximately 17 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for the modification kit is $2,700. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $40,560.

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

For the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Aerospatiale: Applies to all Model Nord 262A series airplanes, certificated in any category, with ERAM main landing gear shock absorber part numbers:

—11105-002 B and higher dash numbers
—11384-001 and higher dash numbers
—11385-001 and higher dash numbers
—11695-002 and higher dash numbers

Compliance is required as indicated, unless previously accomplished. To prevent collapse of the main landing gear (MLG) due to defective shock absorbers, accomplish the following:

A. Within 30 days after the effective date of this AD, disconnect the shock absorber in accordance with Nord 262 Service Bulletin No. 32-22, Revision 2, dated January 11, 1988, and perform the appropriate action as follows:

1. If there is no milled slot serving to extract the male spherical bearing, reassemble in accordance with the service bulletin.

2. If there is a milled slot, extract the male spherical bearing, clean and visually inspect both parts of the bearing assembly for cracks or corrosion in accordance with the service bulletin.

a. If the assembly is found in serviceable condition, grease and re-install in accordance with the service bulletin.

b. If the spherical bearing assembly extracted is found to be cracked or corroded or seized, replace prior to further flight with new type spherical assembly in accordance with ERAM Service Bulletin 32-48 or Nord 262 Service Bulletin 32-22.

B. Within 60 days after the effective date of this AD, replace all separable spherical bearing assemblies, described in paragraph A.2., above, with the new type spherical bearing assembly, in accordance with ERAM Service Bulletin 32-48 or Nord 262 Service Bulletin 32-22, Revision 2, dated January 11, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded thorugh an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-12057 Filed 5-18-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AWP-7]

Proposed Revision of Long Beach, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Long Beach control zone description to exclude the Los Alamitos, CA, control zone area during the hours when Los Alamitos is not in use. This will release the area of Los Alamitos to public use when not activated by the military users.

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

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 89-AWP-7, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0166.

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 the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWP-7." 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 Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, 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 and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the description of the Long Beach control zone. This revision will terminate Long Beach control of the Los Alamitos Armed Forces Reserve Center Airport control zone when Los Alamitos is not activated, and release the Los Alamitos airspace to public use during the hours of non-activation of Los Alamitos Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 71

Aviation safety, 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 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:

Long Beach, CA [Revised]

Within a 5-mile radius of Long Beach Municipal Airport (lat. 33°49'07" N., long. 118°09'04" W). This control zone is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will, thereafter, be continuously published in the "Airport/Facility Directory."

Issued is Los Angeles, California, on May 2, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89-12055 Filed 5-18-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 19

[Notice No. 682; Ref. Notice No. 680]

Increased Tolerance in Alcohol Content for Distilled Spirits Products in 50 and 100 ml Bottle Sizes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 680, a notice of proposed rulemaking (NPRM), published in the **Federal Register** on March 22, 1989, (54 FR 11745). ATF has received two requests for an extension of the comment period in order to provide sufficient time for all interested parties to respond to the issue addressed in the NPRM.

DATE: Written comments must be received on or before July 21, 1989.

ADDRESS: Send written comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 ATTN: Notice No. 680.

FOR FURTHER INFORMATION CONTACT: Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202 566–7531).

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1989, ATF published Notice No. 680, a notice of proposed rulemaking, amending Parts 5 and 19 to allow for a 0.25 percent alcohol by volume (0.5 proof) drop below label proof for any products bottled in 50 and 100 ml size bottles. Subsequent to publication of Notice No. 680, ATF received two requests to extend the close of the comment period 60 days.

One comment submitted on behalf of the Union de Alcools Eaux-de-Vie et Spiritueux, requested the extension due to the fact that the organization plans to discuss the issue raised in the notice at their next meeting, which is not until mid-June. In their letter, they stated that the additional time was necessary to fully assemble the technical data to provide meaningful comments to the proposal.

Another commenter, the National Association of Beverage Importers (NABI), requested the extension in order to afford its members sufficient time to develop their respective positions.

ATF finds the reasons mentioned above to be valid and is, therefore, extending the comment period until July 21, 1989.

Drafting Information

The author of this document is Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 19

Administrative practices and procedures, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205 and 26 U.S.C. 5301.

Signed: May 12, 1989

Stephen E. Higgins,

Director.

[FR Doc. 89–11999 Filed 5–18–89; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Removal of Condition (b)

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period on its intention to remove one condition of the Secretary of Interior's approval of the Illinois Permanent Regulatory Program (hereinafter referred to as the Illinois Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The condition, located in the Federal rules at 30 CFR Part 913.11(b), requires Illinois to promulgate regulations or otherwise amend the Illinois program to require that a minimum of 10 meters (33 feet) cover the pit floor and the highest coal where only water was used to isolate the coal-bearing material. An Illinois program amendment approved by the Director on October 25, 1988, eliminated the option of covering coal seams with only water, thus nullifying the need for condition (b).

This notice sets forth the times and locations that the Illinois program is available for public inspection, the comment period during which interested persons may submit written comments on the removal of condition 30 CFR 913.11(b), and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on June 19, 1989. If requested, a public hearing on the removal of the condition will be held at 1:00 p.m. on June 13, 1989; requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on June 5, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 600 East Monroe Street, Room 20, Springfield, Illinois 62701, Telephone: (217) 492–4495.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone (202) 343–5492.

Illinois Department of Mines and Minerals, 227 S. 7th Street, Room 201, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office; (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Removal of Condition
III. Public Comment Procedures

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** 47 FR 23883. Subsequent actions

concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

II. Discussion of Removal of Condition

As originally submitted to OSMRE, the Illinois program at 62 IAC 1816.103(a)(1) allowed for covering the pit floor and the highest coal seam with a minimum of four feet of water. While the Secretary found that the general concept of covering with water had merit in isolating coal-bearing material to prevent oxidation, technical studies up to that point had only demonstrated that 9 meters or (29–½ feet) of water cover was effective in preventing oxidation. The Secretary concluded that covering with four feet of water is not effective in preventing acid production. Since adequate technical justification was not provided for approving the Illinois provision, the Secretary, with the State's concurrence, imposed condition (b) on his approval of the Illinois program.

As codified at 30 CFR 913.11(b), condition (b) required the State to submit promulgated regulations or otherwise amend its program to require a cover of the pit floor and highest coal seam with a minimum of ten meters (33 feet) of water. It also specified that, pending completion of the above requirements, Illinois could not use its authority to approve covering with less than 10 meters of water.

In accepting the Secretary's conditional approval, Illinois agreed to satisfy condition (b) identified in the Federal rules at 30 CFR 913.11 by June 1, 1983. The deadline was extended several times by mutual agreement between the Secretary and the State. By notice published in the **Federal Register** on October 30, 1985 (50 FR 45112), the Secretary extended the deadline to March 30, 1985 (50 FR 45112), the Secretary extended the deadline to March 30, 1986, to coordinate with a larger rulemaking effort.

By letter dated March 28, 1986 (Administrative Record No. IL–1028), Illinois submitted a major regulatory reform package to OSMRE. Accordingly, OSMRE announced receipt of and solicited public comment on the proposed amendments in the **Federal Register** on May 9, 1986 (51 FR 23858). Illinois revised and resubmitted the amendments on May 22, 1987 (Administrative Record No. IL–1029A). OSMRE announced the resubmission in the **Federal Register** on June 26, 1987 (52 (FR 24035), and reopened the public comment period. OSMRE approved the amendments as revised on October 25, 1988 (53 FR 43137). Contained within the amendments were new requirements for covering exposed coal seams. The Illinois program as amended did not allow covering the coal seam with water, thus nullifying the need for condition (b).

Illinois repealed 62 IAC 1816.103(a)(1), which originally required the imposition of condition (b). At new 62 IAC 1816.102(f), Illinois required exposed coal seams to be adequately covered with non-toxic and noncombustible materials.

Based on the above findings, the Secretary believes the Illinois rules concerning the requirements for covering exposed coal seams are consistent with the Federal rules and the condition of approval of the Illinois program located at 30 CFR 913.11(b) is no longer required and can, therefore, be removed.

III. Public Comments Procedures

The Director now seeks public comment on the removal of condition 30 CFR 913.11(b).

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSMRE Springfield Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on June 5, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person request an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 913

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Date: May 12, 1989.

Ronald C. Recker, Assistant Director,

Eastern Field Operations.

[FR Doc. 89–12063 Filed 5–18–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 169 and 169a

[DOD Instruction 4100.33]

RIN 0790–AA73

Commercial Activities Program

AGENCY: Department of Defense.

ACTION: Correction notice.

SUMMARY: On Monday, April 24, 1989, 32 CFR Part 169 was incorrectly printed in the final rule stage section of the Unified Agenda. On page 16570, in the third column, it was stated that, "32 CFR Part 169, Commercial Activities Program and 32 CFR Part 169a, Commercial Activities Program Procedures are proposed to be removed in their entirety." This statement is also in error. On Monday, April 3, 1989 (54 FR 13373), the Department of Defense published the final version of 32 CFR Part 169. On April 18, 1989 (54 FR 15442), the Department of Defense published the proposed rule of 32 CFR Part 169a. Both CFR parts are still in effect.

FOR FURTHER INFORMATION CONTACT: Mr. Dom Miglionico, Office of the Assistant Secretary of Defense (Production and Logistics) Installations Support Division, the Pentagon,

Washington, DC 20301–8000, telephone (202) 325–0537..

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 15, 1989.

[FR Doc. 89–12019 Filed 5–18–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Salpingostylis Coelestina (Bartram's Ixia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Salpingostylis coelestina* (Bartram's ixia), a perennial herb in the iris family (Iridaceae) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. This plant occurs only in grassy pinelands in a 6-county area of northeastern Florida. It is threatened by habitat loss due to residential land development, by habitat alteration due to the planting of dense stands of pine for pulpwood, and by suppression of naturally-occurring fires that formerly maintained open, grassy understory vegetation beneath the pines.

This proposal, if made final, would implement the protection and recovery provisions afforded by the Act for Bartram's ixia. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by August 17, 1989. Public hearing requests must be received by July 3, 1989.

ADDRESSES: Comments and materials concerning this proposal, and requests for public hearing should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

Salpingostylis coelestina (Bartram's ixia) is a grassy-leafed herb belonging to the iris family (Iridaceae). It was seen by William Bartram, an early American naturalist, on his first trip to Florida in the spring of 1766. He collected a specimen from West of Kanapaha Prairie, Alachua County, (Wunderlin et al. 1980). His well-known *Travels* (published 1791) mentions "azure fields of cerulean Ixea." A plate in the book illustrates the plant, which he named *Ixea caelestina* (Harper 1959, pp. 98,99, 360). Harper gave Bartram's locality as "quite definitely near the shore of Lake Dexter, Volusia County," on the St. John's River (p. 360), but Ward (1979) suspected that Bartram had changed the location for literary effect, since the plant has not since been found south of Palatka, Putnam County, 42 miles to the north. Bartram's scientific names for plants have been generally accepted as legitimate by botanists since Merrill (1945) defended them.

After Bartram, the ixia was misidentified until 1931, when John K. Small of the New York Botannical Garden, led by a staff member of the University of Florida, saw it flowering in pine flatwoods north of Starke, Bradford County. Small correctly identified the plant as Bartram's ixia, created a new genus for it, and corrected Bartram's spelling of the specific epithet, resulting in the name *Salpingostylis coelestina* (Small 1931, Ward 1979). Later, a careful search of major herbaria by Foster (1945) turned up several specimens of Bartram's ixia that had been collected in the nineteenth century. Foster assigned the plant to the genus *Sphenostigma*, making it *Sphenostigma coelestinum*. Goldblatt (1975) retained the species in the genus *Sphenostigma*. Since then, the type species of *Sphenostigma* (from Brazil) has been reassigned to the genus *Gelasine*, but other species that had been assigned to *Sphenostigma* do not belong in that genus. Under the code of botanical nomenclature, the name *Sphenostigma* can no longer be applied to Bartram's ixia (R. Goldblatt, Missouri, Botanical Garden, St. Louis, personal communication, July 1988). Until the taxonomy of this part of the iris family is clarified, Bartram's ixia can be treated as a genus, consisting of only one species, under Small's name, *Salpingostylis coelestina*.

Salpingostylis coelestina is a perennial herb, about 30 centimeters (1 foot) tall. The bulb is dark brown, with a papery coating, well buried in the soil. The basal leaves are usually 2 in number, narrowly linear, 1.5-3 millimeters wide and 20–30 centimeters long. The flower stalk (scape) rises from the ground and has a spathe with one or two flowers. The flowers usually open at dawn (by 9 a.m. if the morning is cool), usually closing by 11 a.m. (later if the day is cloudy). The flowers are 5 centimeters across. The six tepals (petals and sepals that look alike) are violet when they open, fading to blue before the wilt. The three stamens are short and bright yellow. The fruit is a capsule. When flowering, no other plant in the southeastern United States can be mistaken for Bartram's ixia. Flowering may start in April (Ward 1979). In 1987, flowering began by early May, peaked at Memorial Day, and continued sporadically until late June. In 1988, cool, dry weather seemingly stretched out the flowering season (Martin 1987; Peacock personal communication 1988).

Bartram's ixia is native to pine flatwoods, with more or less scattered pines (usually longleaf, sometimes slash) rising above an understory of wiregrass (*Aristida stricta*), with other grasses, herbs, and low shrubs. The understory burns readily, and the vegetation is highly adapted to fire. Clewell (1986) uses the term "firelands communities" for flatwoods and similar fire-dependent vegetation. In the past 30 years, most flatwoods in northeastern Florida have been converted to dense stands of slash pine planted for pulpwood.

Observation of a Bartram's ixia site where the flatwoods vegetation is intact due to prescribed burning and cattle grazing shows that, under these conditions, Bartram's ixia flowers the spring after a fire but not in springs following years without fire (Martin 1987). Large number of ixia flowers have been observed in pine plantations where the trees had recently been cut and the ground disturbed by logging equipment. Smaller numbers of flowers have been observed in recently-plowed fire breaks. Since Bartram's ixia plants do not flower every year under such circumstances, and because the plants are very inconspicuous when not in flower, populations of the ixia may remain unnoticed until fire, logging, or other disturbance occurs. This limits the accuracy of estimates of the ixia's abundance within its geographic range, although the plant's tendency to occur, and to flower, along the edges of road rights-of-way assures that the plant's geographic range is reasonably accurately known. One roadside that was visited by botanists in 1979, 1987, and 1988 has had flowering Bartram's ixias each year (Wunderlin et al. 1980; Marin 1987; Peacock personal communication 1988).

Bartram's ixia occurs in a limited geographic area between Jacksonville, St. Augustine, and Gainesville, Florida, including southern Duval County (where the plant appears to be nearly extirpated), northern St. Johns County west of Interstate 95, Clay County, Putnam County north of Palatka, Bradford County north of Starke, and Baker County south of Interstate 10 (Martin 1987). Within its range, Bartram's ixia is restricted to pine flatwoods vegetation. Bartram's ixia appears to be especially characteristic of soils with the water table at or near the surface during the winter. At one site where the native vegetation is intact, the ixia is restricted to the grassy margins of shallow depressions, where it occurs with the purple pitcher plant (*Sarracenia purpurea*), wiregrass, and *Aletris* (a member of the lily family). Small populations of Bartram's ixia occur along the grassy edges of rights-of-way of paved roads, usually with *Aletris*, *Calopogon* orchids, and other plants of wet areas (Martin 1987; Peacock personal communication 1988).

Herbarium specimens and observations (Ward 1979, Wunderlin et al. 1980) indicate that as pine flatwoods have been converted to dense pine plantations, and as fire suppression has become increasingly prevalent and effective, flowering Bartram's ixia plants have become fewer. Some site preparation methods associated with forestry (bulldozing, root raking, bedding, chopping) are likely to destroy or damage Bartram's ixia plants (Kral 1983). It is possible that the shady conditions of maturing pine plantations are not favorable to the ixia. This is certainly the case for other fire-adapted members of the pineland flora (Clewell 1986).

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. In this report, Bartram's ixia, under the name *Sphenostigma coelestina* (sic), was considered threatened. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report as a petition in the context of section 4(c)(2) (now section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. On December 14, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Sphenostigma coelestinum* as a category 2 candidate (a taxon for which data in the Service's possession indicate listing is possibly appropriate). A notice of review published on September 27, 1985 (50 FR 39526) maintained *Sphenostigma coelestinum* as a category 2 candidate. The proposal to list this species as endangered is based on the information available in 1980, augmented by searches for the plant carried out by Martin (1987), with all sites revisited at least once by him in 1988, and by Peacock (personal communication 1988).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Sphenostigma coelestinum*, because the Service had accepted the 1975 Smithsonian report as a petition. In October of 1983, 1984, 1985, 1986, 1987, and 1988, the Service found that the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of the present proposal constitutes the final finding that is required.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Salpingostylis coelestina* (Bartram) Small (=*Sphenostigma coelestinum* (Bartram) Foster) (Bartram's ixia) are as follows:

A. *The present of threatened destruction, modification, or curtailment of its habitat or range.* Bartram's ixia is restricted to pine flatwoods in northeastern Florida. Similar habitat elsewhere in Florida and other southeastern States lacks the ixia. In the past 30 years, nearly all of the flatwoods in northeast Florida have been converted to pine plantation, with densely planted slash pine. When the trees mature, there is little understory vegetation. Planted pine stands are burned only occasionally, if at all. Additionally, ditching and site preparation methods such as bedding now allow the successful planting of pines on sites that previously would have been too wet. Clewell (1986) noted that some of the understory plants characteristic of flatwoods persist under the first crop of pines to be planted on a site, but that "in subsequent rotations, these residual plants will be much less important or entirely absent." Clewell drew on three studies of pine plantations within the range of Bartram's ixia, although none was known to have this plant. The discovery of flowering populations of flowering Bartram's ixia in two recently cut-over pine plantations in 1988 shows that the plant can persist under the first crop of pines; however, experience with other species of the same habitat indicates that the ixia will almost certainly decline after the sites are replanted with pines (Clewell 1986).

Some sites that once had populations of Bartram's ixia have been converted to pastures, where the plants do not persist, or to miscellaneous land uses. Near Starke, a junkyard displaced a site that had been visited by Small (Wunderlin et al. 1980).

The growth of the Jacksonville metropolitan area is a threat to Bartram's ixia. The plant was collected in the Mandarin section of Duval County (Jacksonville) in 1960, but this area is now almost entirely residential. Bartram's ixia is still fairly abundant along paved roads in northwestern St. Johns County south of Jacksonville, but this area will almost certainly be developed for residential and commercial purposes. Four residential/mixed use developments large enough to require approval through Florida's Development of Regional Impact (DRI) process have been proposed for this area already. These projects might house as many as 143,000 people within 20 years ("Jacksonville Times-Union", August 21, 1988). The ixia is also locally abundant in remnant flatwoods around Middleburg and Orange Park in Clay County, southwest of Jacksonville. These areas are growing very rapidly with an estimated 32.3 percent increase in population from 1982 to 1987 (Moore 1988). A proposed Jacksonville outer beltway to connect Interstate 95 to Interstate 10 through St. Johns and Clay Counties will pass through these rapidly developing areas, possibly further accelerating growth.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable at the present time. Since this plant has bulbs, it may be vulnerable to attempts to bring it into cultivation or to "rescue" it from the wild.

C. *Disease or predation.* None apparent.

D. *The inadequacy of existing regulatory mechanisms.* Bartram's ixia is listed as threatened (as *Sphenostigma coelestinum*) by the Preservation of Native Flora of Florida Act (section 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act will offer additional protection through sections 7 and 9, and through recovery planning.

E. *Other natural or manmade factors affecting its continued existence.* The restricted geographic range of this plant, combined with extensive alteration of its habitat, increases the risks posed by the preceding four factors, making it likely that the species could become extirpated throughout most of its range in the absence of organized conservation efforts.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by Bartram's ixia in determining to propose this rule. Based on this evaluation, the preferred action is to list Bartram's ixia as endangered. Its limited geographic range, combined with alteration of nearly all of its habitat, the near certainty that existing populations on road edges will diminish, and the expansion of the Jacksonville urban area indicate that the species is in danger of extinction in a significant portion of its range, and therefore fits the Act's definition of endangered.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for Bartram's ixia at this time. Federal agencies can be alerted to the presence of this species without the publication of critical habitat descriptions and maps. Because Bartram's ixia is a conspicuous plant when in flower, publication of critical habitat descriptions and maps might increase the threat from taking or vandalism. Designation of critical habitat affects only Federal agencies. No Federal agencies manage land with Bartram's ixia. Navy facilities in Jacksonville, at the edge of the plant's range, were searched, but no ixias were found (Martin 1987).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to critical habitat, if any is being designed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitit. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The currently known sites for Bartram's ixia are on private land and highway rights-of-way. The Florida Department of Transportation is aware of the approximate locations of the populations of the ixia along its highways, and knows the precise location of the best such population. The populations of Bartram's ixia on State-owned rights-of-way may be subject to Federal involvement if the U.S. Department of Transportation (Federal Highway Administration) should provide funds for maintenance or construction. The Florida Department of Transportation is aware that construction of an outer beltway for Jacksonville could affect the plant; at the present time, no Federal funding is planned for the project. Bartram's ixia may eventually be found to occur on Camp Blanding, which is operated by the Florida National Guard. Federal mortgage programs may be subject to section 7 review, including those of the U.S. Department of Agriculture (Farmers Home Administration), Veterans Administration, and the U.S. Department of Housing and Urban Development (Federal Housing Administration loans). The supply of electricity to new housing developments may be subject to Federal involvement through Rural Electrification Administration funding.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer to sell it in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for listed plants the 1988 amendments (Pub. L. 100–478) to the Act prohibit their malicious damage or destruction on Federal lands, and their removal, cutting, digging up, or damaging or destroying in knowing violation any State law or regulation, including State criminal tresspass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. The Service anticipates few requests for permits because there is currently no known commercial trade in Bartram's ixia. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038–7329 (202/343–4955).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public or other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby

solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Salpingostylis coelestina;*

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the range and habitat of this species and their possible impacts on it.

Final promulgation of the regulation on *Salpingostylis coelestina* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Arthor

The primary author of this proposed rule is David Martin, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (904/791–2580 or FTS 946–2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

Proposed Regulation Promulgation

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Iridaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Iridaceae—Iris family:						
* * * *		*	*	*	*	
Salpingostylis coelestina (=Sphenostigma coelestinum).	Bartram's ixia	U.S.A. (FL)	E		NA	NA
* * * *		*	*	*	*	

Dated: March 22, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–11997 Filed 5–18–89; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule To Determine Neosho Madtom (Noturus Placidus) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a fish, the Neosho madtom (*Noturus placidus*), to be a threatened species under the authority of the Endangered Species Act of 1973 (Act), as amended. The madtom is currently

known from the Neosho River (Grand River in Oklahoma) drainage, including the Neosho River in Kansas and Oklahoma, the Cottonwood River in Kansas and the Spring River in Missouri. Habitat destruction and modification, principally due to impoundments and dredging activities, has decreased the distribution and population of the species and isolated it into three populations. Increased water demand, pollution, and continued habitat destruction threatens the Neosho madtom. This proposal, if made final, would implement protection provided by the Act, make available conservation measures implemented by the Act, and identify the taxon as one in need of conservation to groups in and outside of the Federal Government. The Service is requesting data and comments from interested parties on this proposal.

DATES: Comments from all interested parties must be received by July 18, 1989. Public hearing requests must be received by July 3, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Fish and Wildlife Enhancement, 215 Southwind Place, Manhattan, Kansas 66502. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: L. Ronel Finley, State Supervisor, or Daniel W. Mulhern, Endangered Species Coordinator, at the above address, telephone (913) 539–3474.

SUPPLEMENTARY INFORMATION:

Background

Gilbert's (1886) collection of a *Noturus* specimen from the Neosho River near Emporia, Kansas, apparently is the first known record of the Neosho madtom (*Noturus placidus*). Two more specimens were taken from the Neosho River in Coffey County by the Kansas University Biological Survey in 1912 (Wagner et al. 1984). Additional collections were made in 1951 and 1952 in the Neosho River in Kansas and Oklahoma and also the Cottonwood River in Kansas (Taylor 1969; Wagner et al. 1984). Specimens of Neosho madtom were collected in the Spring River in Kansas in 1963 and in Missouri in 1964 (Wagner et al. 1984). The Cottonwood and Spring Rivers are part of the Neosho River drainage.

Specimens also were collected from near the mouth of the Illinois River in Sequoyah County, Oklahoma, in 1946 (Moore and Paden 1950). Subsequent collections in 1948 and 1950 confirmed the presence of Neosho madtom in the lower Illinois River (Wagner et al. 1984). These are the only recorded occurrences of this species outside of the Neosho River drainage. Moss (1981) later made collections at three historical sites on the Illinois River but found no Neosho madtoms. He concluded that hypolimnetic discharges from Tenkiller Ferry Dam may have produced temperatures that were too low for successful reproduction and growth of the species. It is believed that the species is extirpated from the lower Illinois River.

Sixty-eight percent of the recent (since 1970) collections of this species are from 21 locations in the Neosho River (Wagner et al. 1984). The most upstream location is in Lyon County, Kansas, and the most downstream is near Miami in extreme northern Ottawa County, Oklahoma, indicating the species is occupying at least the northern portion of its historic range. Although its original range included the entire Neosho (Grand) River drainage mainstreams, Moss (1981) was unable to locate specimens in suitable habitat between the reservoirs along this river in Oklahoma, indicating that reservoir construction has an adverse impact on Neosho madtom populations.

Records of Neosho madtom from the Cottonwood River are from 8 localities and 22 collections, with the confluence with Middle Creek near Elmdale, Chase County, Kansas, the most upstream locality. Collections made in 1983 along the Cottonwood River indicate that the species is relatively stable in this river (Wagner et al. 1984).

The distribution of this species in the Spring River is limited to only seven collections from three localities (Wagner et al. 1984, Moss 1981, Pflieger 1971, Branson et al. 1970). Collections from both Kansas and Missouri were taken very near the State line.

The current distribution of the Neosho madtom is restricted to the Neosho River drainage, including the Neosho River in Kansas (Lyon, Coffey, Woodson, Allen, Neosho, Labette, and Cherokee Counties) and Oklahoma (Ottawa County), the Cottonwood River in Kansas (Lyon and Chase Counties), and the Spring River in Missouri (Jasper County) and Kansas (Cherokee County). Wagner et al. (1984) estimates that habitat loss through reservoir construction has eliminated as much as one-third of the original range of this species.

The Neosho madtom is small, with adults averaging less than 3 inches long. It is characterized by having a midcaudal brownish stripe of pigment and a relatively deep body. The humeral process is moderately long, with somewhat reduced serrations of the pectoral spine. The adipose fin is well connected with the caudal fin. The mottled skin pigment readily distinguishes this species from other congenerics found within its range (Taylor 1969).

The species is almost exclusively found in riffles (Cross and Collins 1975, Deacon 1961), but exceptions to this generalization may be observed during early life stages and during spawning periods. Moss (1981) found that the Neosho madtom demonstrates a strong selection for small gravel substrates, usually less than 1 inch in diameter, and are only abundant on riffles with ⅜ to ⅝-inch gravel prevalent. The substrate must be loosely packed so the madtoms can "wriggle" down into the gravel.

Adults utilize moderate to swift currents, while juveniles are most often found in areas of low current. Juveniles are found in depths from 4 to 39 inches, while adults tend to use depths less than 12 inches (Moss 1981). Wagner et al. (1984) found that habitat use appeared to be very specific, and suitable habitat was easy to identify. Moss (1981) speculated that spawning occurs in late June and July and that madtoms feed primarily on aquatic insects.

On two occasions in the recent past, Neosho madtom populations have suffered severe reductions. A drought in 1952–56 depleted Kansas population levels, but the species subsequently returned to earlier levels of abundance (Deacon 1961). A second reduction was documented in 1967 when Cross and Braasch (1968) found the species absent from all their sample stations, which were in the Neosho River and at the confluence of the Cottonwood River and the South Fork of the Cottonwood River. The species was locally abundant at these same stations in 1951 and 1952. Cross and Braasch (1968) attributed the decline to numerous fish kills in 1966 and 1967 caused by runoff from cattle feedlots, as well as destruction of habitat by gravel dredgers. Pollution laws regulating feedlot runoff were passed in 1967, and stream depositization has replaced the gravel substrate at these locations. Collections made by Moss (1981) in these areas indicate that the species' population has returned to earlier levels of abundance.

Dredging for sand and gravel, a common practice in the Neosho River drainage, may have drastic short-term effects, but over a longer time period, the species may be able to recover due to the natural depositional process that takes place after the disturbance ceases (Wagner et al. 1984). Reservoir construction is a major threat to the species (Moss 1981). No specimens have been collected from five reservoirs constructed within the species' range, and habitat inundation is assumed to have caused local extirpation. The lower

section of the Neosho River in Oklahoma is a series of reservoirs that has eliminated as much as one-third of the original range of the species (Wagner et al. 1984). Efforts to capture specimens in suitable habitat between the Oklahoma reservoirs have been unsuccessful (Moss 1981).

On December 30, 1982, the Service announced in the Federal Register (47 FR 58454) that the Neosho madtom, along with 146 other fish species, was being considered for addition to the List of Endangered and Threatened Wildlife. Under contract with the Service, a status report on the Neosho madtom was prepared by the Oklahoma Cooperative Fishery Research Unit (Wagner et al. 1984). The species was included in the Service's September 18, 1985, Notice of Review of Vertebrate Wildlife (50 FR 37958) as a category 1 species, indicating that the Service has substantial biological data to support a proposal to list the species as endangered or threatened.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth in the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Neosho madtom (*Noturus placidus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat modification, both existing and potential, comprises the major threat to the survival of the Neosho madtom. Deacon et al. (1979) recognized the species as threatened because of present or potential threats to its habitat or range. Such modification includes, among other things, water diversion, impoundment, reallocation, channelization, flood control, water pollution, and dredging for sand and gravel. This modification has resulted in the complete destruction or curtailment of a portion of the historic habitat and modification of much of the remaining habitat. Wagner et al. (1984) estimates that one-third of the historic habitat of the Neosho madtom has been lost already.

The construction of reservoirs causes the inundation of riffle habitat and changes turbidity, nutrient levels, and water temperatures downstream. No specimens have been captured in a reservoir, and habitat inundation is assumed to have caused local extirpation of the species (Moss 1981; Wagner et al. 1984).

Efforts to capture specimens in suitable habitat between reservoirs in Oklahoma have been unsuccessful (Moss 1981). The lower section of the Neosho (Grand) River in Oklahoma is a series of reservoirs that have eliminated as much as one-third of the original range of the species (Wagner et al. 1984). The disappearance of Neosho madtoms from the lower Illinois River in Oklahoma is attributed to hypolimnetic discharges from Tenkiller Ferry Dam which produced temperatures that were too low for successful reproduction and growth of the species (Moss 1981). The construction of John Redmond Reservoir on the Neosho River in Kansas destroyed additional riffle habitat.

The increasing demand for water for agricultural and municipal use will continue, with a projected increase in demand of 25 percent over the next 50 years in the Neosho River Basin (Kansas Water Office 1987), further impacting madtom habitat. An example of the effects of a decrease in flow occurred during the drought of 1952–1956 when the Neosho River was completely devoid of flowing water for several months. The species suffered a dramatic decline and did not become common again until the third consecutive summer of continuous flow (Deacon 1961).

The Soil Conservation Service, U.S. Department of Agriculture, has proposed a project to construct as many as 11 small dams within the South Fork watershed of the Cottonwood River. Additionally, the U.S. Army Corps of Engineers (Corps) is investigating the possibility of constructing up to 112 small dams within the Cottonwood and Upper Neosho River watersheds. The Corps is also investigating the possibility of reallocating storage in existing Federal reservoirs in the Neosho River basin. All of these projects have the potential to alter and/or reduce flows within the madtom's habitat. The Wolf Creek Nuclear Generating Station, near Burlington, Kansas, uses water from John Redmond Reservoir. To meet the station's legal water allocation, the elevation of the conservation pool will have to be increased in the future, further depleting flows in the Neosho River.

The Spring River drainage in Kansas and Missouri is rich in lead, zinc, and coal reserves; development of these resources has been extensive and can be expected to continue. Documented effects include stream pollution and water depletions (Spruill 1984). The lower Spring River in Missouri has also been polluted by sewage and industrial effluents (Dieffenbach and Ryck 1976). Additionally, the Neosho River flows through numerous oil fields in southeastern Kansas, presenting the threat of oil spills into the river. Cross (personal communication) believes that runoff from livestock feedlots is still a potential threat to the species.

Sand and gravel dredging has been demonstrated to affect fish communities in the lower Kansas River, with the extent of the effects being dependent on the age and location of the dredging site (Cross et al. 1982). The short-term effects on the Neosho madtom of dredging activities in streams utilized by the species may be drastic, but over a longer time period the species may be able to recover if the situation is not compounded by additional threats.

B. *Overutilization of commercial, recreational, scientific, or education purposes.* There is no evidence to suggest overutilization of the Neosho madtom for any of these purposes.

C. *Disease or predation.* There is no evidence of threats to the Neosho madtom from disease. Efforts to improve the sport fishery in the State have resulted in an increase in such predators as white bass (*Morone chrysops*) and walleye (*Stizostedion vitreum*) in most reservoirs, and it is likely these predators have also increased in the associated rivers. It is not known whether predation on Neosho madtom has increased.

It is unknown what role interspecific competition may play in determining Neosho madtom abundance. Where the species occurs along with the slender madtom (*Noturus exilis*) in the Spring River, *N. exilis* is generally found in habitat typically occupied by *N. placidus*, with *N. placidus* found in more marginal habitat (Frank Cross, personal communication). the slender madtom is not common in the Neosho or Cottonwood Rivers where the Neosho madtom is most abundant.

D. *The inadequacy of existing regulatory mechanisms.* The Neosho madtom is officially listed as threatened by the State of Kansas, and endangered by the States of Oklahoma and Missouri. All three States prohibit taking this fish without a State permit. The Kansas Department of Wildlife and Parks has designated portions of the Cottonwood, Neosho, and Spring Rivers as critical habitat for the Neosho madtom. The Department also requires a permit for public actions in Kansas which have the potential to destroy individuals of an endangered or threatened species of the critical habitat. Activities subject to such

permits include publicly funded or State of federally assisted actions, or any action requiring a permit from any other State or Federal agency. However, the penalty for violating a Kansas permit for a threatened species is only a maximum fine of $500 and/or 30 days in jail, which is probably not sufficient to deter adverse actions from occurring for large projects. Federal actions are not subject to the State law unless specifically provided by Congress. Thus, it appears that in some cases the existing regulatory mechanisms are inadequate to protect the Neosho madtom. Federal listing would provide additional protection by requiring Federal permits for taking the fish and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species

E. *Other natural or manmade factors affecting its continued existence.* The Neosho madtom has recently exhibited severe population declines due to pollution and drought (Deacon 1961; Cross and Braasch 1968). While drought is a natural phenomenon, the effects of drought are intensified by human degradation. The species occupies a very specialized macrohabitat, and its range has significantly decreased in the last 20 years. The species' range is now divided into three populations: In the Neosho and Cottonwood Rivers above John Redmond Reservoir in Kansas, the Neosho River below John Redmond Dam in Kansas and Oklahoma, and the Spring River in Kansas and Missouri. The unlikelihood of individual interchange between populations intensifies the problems of repopulation following rapid declines.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Neosho madtom as a threatened species. The original range of the species has decreased to three populations in three rivers. The factors which brought the species to this condition are still threatening it. Because the species remains abundant in some locations, it is unlikely the species will become extinct in the foreseeable future. Therefore, endangered status is considered inappropriate. For reasons given below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Although intentional taking of the Neosho madtom is presently not known to be a problem, the species could be vulnerable to this threat. The fish is found in very specialized, easily identifiable habitat. Most of the inhabited stream reaches are easily accessible by road, making it very easy for someone to intentionally poison them. The Service believes that no benefit to the species can be identified that would outweigh the potential threats of vandalism which might be exacerbated by the publication of a detailed critical habitat description and maps. All the involved agencies will be informed of the location of the populations of the Neosho madtom and the importance of protecting this species' habitat. No further notification benefits would accrue from designating critical habitat. Protection of the species' habitat and its proper management will be addressed through the recovery process and through seciton 7 consultations. Therefore, it would not be prudent to determine critical habitat for the Neosho madtom at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement is expected to include U.S. Soil Conservation Service water retention practices and U.S. Army Corps of Engineers stream modification practices. The Soil Conservation Service conducts water retention projects within the watersheds of the three river systems sustaining the madtom. The Corps of Engineers conducts activities and issues permits to applicants for activities such as impoundment, channelization, flood control, and dredging. The above agencies may be required to consult with the Service on such activities to insure that they are not likely to jeopardize the continued existence of this species.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic

hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Neosho madtom;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on the Neosho madtom will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the State Supervisor, Fish and Wildlife Enhancement, Manhattan, Kansas (see **ADDRESSES** above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Daniel W. Mulhern, Fish and Wildlife Enhancement, Manhattan, Kansas (913/539–3474, see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetic order, under "FISHES", to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
Madtom, Neosho	*Noturus placidus*	U.S.A. (KS, MO, OK)	Entire	T		NA	NA

Dated: March 22, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-11998 Filed 5-18-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 90524-9124]

Atlantic Sea Scallop Fishery

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule for comment on Amendment 3 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). These proposed regulations set forth the proposal of Amendment 3 that all vessels must offload sea scallops within a 12-hour time window each day as follows:

State of offloading	Period
ME and NH	7 a.m. to 7 p.m.
MA, RI and CT	5 a.m. to 5 p.m.
NY, NJ, DE, MD and VA	6 a.m. to 6 p.m.
NC, SC, GA and FL	12 noon to 12 midnight.

The purpose of Amendment 3 is to improve compliance with the meat count/shell height standards of the FMP by implementing a mandatory structure for the offloading of harvested scallops. Amendment 3 is also designed to enhance the efficiency and effectiveness of NMFS enforcement efforts in the Atlantic sea scallop fishery.

DATE: Comments on the proposed rule must be received on or before June 20, 1989.

ADDRESSES: Comments on the proposed rule should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the Scallop Regulations."

Copies of the amendment, the environmental assessment, and the regulatory impact review/initial regulatory flexibility assessment (RIR/IRFA) are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Scallop FMP Coordinator, Plan Administration Branch, NMFS Northeast Regional Office, 508-281-9331.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed by the New England Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.* The FMP was approved by the Secretary of Commerce (Secretary) and implemented by final regulations effective August 13, 1982 (47 FR 35990). The FMP has been amended three times—twice by the Council and once by the Secretary. Amendment 1 became effective November 6, 1985 (50 FR 46069); Secretarial Amendment superseding Amendment 1 became effective January 14, 1987 (52 FR 1462); and Amendment 2 became effective June 23, 1988 (53 FR 23634). Amendment 3 and proposed regulations for its implementation were transmitted by the Council to the Secretary for review on April 7, 1989. Under authority of section 304(a)(1)(D)(i) of the Magnuson Act, as amended, 16 U.S.C. 1854(a)(1)(D)(i), the proposed regulations submitted by the Council have been changed to more fully explain the scope of Amendment 3 and the enforcement measures necessary for its implementation. The proposed regulations submitted by the Council failed to distinguish between offloading and landing for purposes of implementation of the offloading window. The definition of "offloading" has been added to these proposed regulations. Furthermore, discussions with GCNE and NMFS Enforcement officers indicated that effective enforcement of the 12-hour window could only be accomplished if strictly applied to all sea scallop landings, and all landings from those vessels holding permits for the directed sea scallop fishery. The rationale for and possible impact of these regulations on the incidental and directed Atlantic sea scallop fisheries are discussed below. NMFS encourages the Council to carefully review and comment on this proposed rule.

The principal objective of the FMP is to maximize over time the joint social and economic benefits from the harvesting and use of the sea scallop resource.

Sub-objectives to achieve this goal are: (1) Restoration of adult stocks in terms of their abundances and age distribution in order to reduce the year-to-year fluctuations in stock abundance caused by variation in recruitment; and (2) enhancement of yield per recruit for each stock.

The primary management measure used to achieve these objectives is the requirement that sea scallops harvested must, on average, meet a 30 meats per pound standard (30 meat count standard) for shucked scallops with a corresponding 3½ inch shell height standard for scallops landed in the shell. This standard provides long-term benefits in terms of yield per recruit, stock abundance and stability of the Atlantic sea scallop resource.

Over the past 8 months, documentation from Council meetings, testimony at public hearings, and information received during meetings with scallop fishermen and industry organizations have indicated the occurrence of extensive landings of undersized scallops which exceed the 30 meat count standard. The landings take place at night, often in secluded places that are not quickly accessible by NMFS enforcement agents. This practice seriously jeopardizes achievement of the biological and conservation objectives of the FMP.

This practice also undermines the conservation efforts and economic well-being of those in the industry who struggle to comply with the 30 meat count standard. Scallopers who comply are harvesting reduced quantities of

scallops relative to those who do not comply. This in turn limits the revenue the scallopers in compliance receive from the sale of their catch. Violators, on the other hand, harvest significantly greater quantities of scallops, which yield greater revenues. This disparity in earning ability has led to an increase in the level of non-compliance throughout the scallop harvesting industry.

In light of these circumstances, the Council believes that it is necessary to take steps that will improve the level of compliance with the meat count/shell height standards, in order to better achieve the biological and conservation objectives of the FMP. Amendment 3 is designed to aid in this effort by establishing a system for a 12-hour daily time window within which scallops must be offloaded from a vessel (the "offloading window").

The purpose of Amendment 3 is to improve compliance with the meat count/shell height standards of the FMP by implementing a mandatory structure for the offloading of harvested scallops. Amendment 3 is also designed to enhance the efficiency and effectiveness of NMFS enforcement efforts in the Atlantic sea scallop fishery. Amendment 3 establishes specific time windows within which scallops may lawfully be offloaded. The offloading windows cover different 12-hour periods in different states where Atlantic sea scallops are landed. The varying time periods are necessary to accommodate customary industry practices in the various states which are affected. The windows reduce by half the amount of time, during any day, within which scallops may be lawfully offloaded from any vessel. Offloading of scallops outside an offloading window constitutes a separate violation of the regulations—regardless of the meat count/shell height measurements of the scallops being offloaded.

If offloading of scallops is to occur, it must be commenced and completed within the offloading window. There is no intention to exercise any tolerance with respect to this measure. Vessel owners and/or representatives should be careful to provide for sufficient time to complete any intended offloading of scallops within the offloading window. Also, in order for this measure to be effectively enforced, it must apply to all fish on board a vessel required to have a federal Atlantic sea scallop permit (sea scallop permit). For example, a vessel holding a sea scallop permit and carrying 4,000 pounds of scallops and 1,000 pounds of groundfish would be prohibited from offloading any groundfish or scallops outside of an offloading window. Vessels with sea scallop permits detected offloading scallops or any fish outside of the applicable offloading window will be subject to seizure of all fish in possession, in addition to the assessment of a civil penalty.

Vessels not required to have a sea scallop permit, but carrying sea scallops, must offload the sea scallops within an offloading window but may offload any other fish outside the offloading window. Vessels not required to have a sea scallop permit and detected offloading scallops outside of the applicable offloading window will be subject to seizure of all fish in possession, in addition to the assessment of a civil penalty.

The measures discussed above are necessary for the effective and efficient enforcement of Amendment 3. Accordingly, holders of sea scallop permits who are not actively involved in the sea scallop fishery are advised to re-evaluate their need for such a permit. These measures do not restrict participation in the sea scallop fishery.

The offloading windows, coupled with complete catch seizure for unlawful offloading, will increase the chances of detecting violations, and will encourage voluntary compliance. Offloading at any other time will constitute a *prima facie* violation of the offloading window prohibition, which will not require any sampling. With these measures in place, as discussed above, NMFS enforcement agents will be able to more efficiently and effectively apply their resources.

Amendment 3 should have two immediate and directly beneficial biological results. First, the number of scallops surviving to sexual maturity is expected to increase, thus augmenting the spawning stock biomass. Second, because the number of small scallops harvested will decrease, the yield per recruit (i.e., the size of each scallop) will rise, to the benefit of the fishermen.

In accordance with the discussion above, Amendment 3 sets forth the proposal that all vessels holding a sea scallop permit must offload all fish on board within a 12-hour time window each day as follows:

State of offloading	Period
ME & NH	7 a.m. to 7 p.m.
MA, RI & CT	5 a.m. to 5 p.m.
NY, NJ, DE, MD & VA	6 a.m. to 6 p.m.
NC, SC, GA & FL	12 noon to 12 midnight.

Vessels not required to have a sea scallop permit, but carrying sea scallops, must offload all sea scallops within the applicable 12-hour time window each day.

The Secretary specifically requests comments on potential impacts of these proposed regulations on fishing and offloading practices of vessels holding sea scallop permits.

Classification

Section 304(a)(1)(D) of the Magnuson Act, as amended by Pub. L. 99-659, 16 U.S.C. 1854(a)(1)(D), requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. In accordance with section 304(a)(1)(D)(i) of the Magnuson Act, the Secretary has changed the proposed regulations submitted by the Council to more fully explain the scope of Amendment 3 and the enforcement measures necessary for its implementation. Further, at this time the Secretary has not determined that Amendment 3 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views and comments received during the comment period.

The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment may be obtained from the Council at the address given above.

The Undersecretary for Oceans and Atmosphere, NOAA, has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The proposed action (offloading window) is the preferred alternative for the following reasons:

(1) The proposed action will help to achieve the objectives of the FMP by improving compliance with the 30 meat count standard of the FMP, and by enhancing the effectiveness of NMFS enforcement efforts in the Atlantic sea scallop fishery. Compliance will be improved by limiting the number of hours during any day within which scallops may be lawfully offloaded from a vessel. Offloading scallops at any other time than the specified 12-hour offloading windows will subject all fish on a vessel to seizure, as well as to the assessment of a civil penalty. Enforcement will be enhanced because the time-consuming task of sampling/weighing of scallops will have to be carried out only for inspections conducted during the offloading hours. Detections of offloading at any other

time will constitute a separate violation of the regulations, not requiring any sampling/weighing, and triggering seizure of all fish on board a vessel.

(2) Neither the government nor the industry must purchase any special equipment to implement the offloading window program.

(3) Legal landings and revenues will not be affected.

(4) The proposed action will result in greater compliance, which will result in small scallops being preserved and allowed to spawn and grow. Better compliance with the regulations, hence expected benefits, will be more readily achieved with the offloading window, and net benefits to society will be maximized.

(5) It is expected that the industry can adjust its practices to mitigate any burden resulting from this rule.

(6) The proposed action is expected to have no impact on vessel safety in the Atlantic sea scallop fishery consistent with the intent of section 303(a)(6) of the Magnuson Act, as amended, 16 U.S.C. 1853(a)(6).

The proposed action will result in no change in legal landings, prices, costs, or revenues. Administrative, enforcement, and paperwork and recordkeeping requirements will remain unchanged. Thus, there are no adverse impacts on Federal, state, or local government agencies. Employment impacts may occur in shucking houses, as evidenced in a letter from the North Carolina Fisheries Association, because scallops are usually processed along with crabs and shrimp as they are landed. The proposed action would have no effect on competition, investment, productivity or innovation in the fishery. The import market for Canadian landed sea scallops, many of which are seasonally sold in the United States, should not be affected in any way.

Accordingly, the foregoing analysis results in a finding that the proposed action does not constitute a "major rule" that would require a regulatory impact analysis under E.O. 12291.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act require the Secretary to publish this proposed rule within 15 days of its receipt. The proposed rule is being reported to the Director, Office of Management and Budget with an explanation of why it is not necessary to follow procedures of that order.

A determination as to whether the proposed rule as changed by NOAA, if adopted, will have a significant economic impact on a substantial number of small entities will be made in conjunction with publication of the final rule. NOAA cannot make this determination in conjunction with this proposed rule because the statutory deadlines of the Magnuson Act do not allow for furthur delay in publishing this document. You may obtain a copy of the Council's assessment that Amendment 3 would have no significant impact from the Council at the address listed above.

This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

The Council has determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina and Florida. Georgia does not have an approved coastal zone management program. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. South Carolina and Florida have agreed to comment within the alternative time schedule.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: May 12, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 650 is proposed to be amended as follows:

PART 650—[AMENDED]

1. The authority citation for Part 650 continues to read as follows:

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

2. In § 650.2, the definition of "offload" is added in alphabetical order to read as follows:

§ 650.2 Definitions.

* * * * *

Offload means to enter port and remove (i.e., to pass over the rail or otherwise take away) fish from any vessel.

* * * * *

3. In § 650.4, paragraph (a) is revised to read as follows:

§ 650.4 Vessel permits.

(a) *General.* Any vessel of the United States harvesting, receiving, or carrying Atlantic sea scallops in quantities greater than 5 bushels in the shell or 40 pounds of meats per trip shall have a permit required by this part on board the vessel.

* * * * *

4. In § 650.7, paragraphs (b) through (f) are redesignated (d) through (h), and new paragraphs (b) and (c) are added to read as follows:

§ 650.7 Prohibitions.

* * * * *

(b) Offload any fish from a vessel with a permit issued under § 650.4 of this part at any time other than the times specified in § 650.21(c).

(c) Offload Atlantic sea scallops from a vessel not required to have a permit under § 650.4 of this part at any time other than the times specified in § 650.21(c).

* * * * *

5. In § 650.21, the section heading is revised and new paragraphs (c) and (d) are added to read as follows:

§ 650.21 Compliance and Sampling.

* * * * *

(c) All vessels with a permit issued under § 650.4 of this part must offload all fish on board within a 12-hour time window each day as follows:

State of offloading	Period
ME & NH	7 a.m. to 7 p.m.
MA, RI & CT	5 a.m. to 5 p.m.
NY, NJ, DE, MD & VA	6 a.m. to 6 p.m.
NC, SC, GA & FL	12 noon to 12 midnight.

(d) All vessels not required to have a permit under § 650.4 of this part must offload all Atlantic sea scallops on board within a 12-hour time window as specified in § 650.21(c).

[FR Doc. 89-11994 Filed 5-16-89; 10:14 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 96
Friday, May 19, 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

Animal and Plant Health Inspection Service

[Docket No. 89-075]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Plant-Associated Micro-Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Crop Genetics International, to allow the field testing of genetically engineered plant-associated micro-organisms in the States of Illinois, Maryland, Minnesota and Nebraska. The assessment provides a basis for the conclusion that the field testing of these genetically engineered plant-associated micro-organisms will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyatsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Sally McCammon, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-355-01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Crop Genetics International, Hanover, Maryland, has submitted an application for a permit for release into the environment, to field test genetically engineered plant-associated micro-organisms at eight locations. The locations are in Sangamon County, Illinois; Queen Annes and Prince Georges Counties, Maryland; Goodhue County, Minnesota; and Clay and Dodge Counties, Nebraska.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the plant-associated micro-organisms under conditions described in the Crop Genetics International application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Crop Genetics International, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. The delta-endotoxin gene from *Bacillus thuringiensis* was inserted into the *Clavibacter xyli* subsp. *cynodontis* genome. The gene is lost from the bacterium at the rate of once in every 12,500 bacterial cells per generation *in vitro*. Both the revertant (which has lost the delta-endotoxin gene) and the naturally occurring bacterial strains grow faster (14 percent growth rate differential in laboratory medium) than the recombinant bacterium. In the field, revertant bacteria can make up to 6 percent of the population of the bacterium, depending on the plant part, by the end of the gowing season. Thus, the delta-endotoxin gene will enventually be lost from the recombinant bacterium.

2. The genetic alternations are not expected to enhance any plant pathogenic property of the recombinant bacterium as compared to the parental strain of *C. xyli* subsp. *cynodontis* that is already present in Illinois, Maryland, and Nebraska, where seven of the test plots are located. In addition, there is evidence that Bermuda grass containing *C. xyli* subsp. *cynodontis* has also been introduced previously into Minnesota.

3. Although *C. xyli* subsp. *cynodontis* is readily transferred by mechanical means (e.g., cutting tools) to other plants, it is not transferred easily by other mechanisms in the field. Transfer to other plants by mechanical transfer will be minimized in the field plot designs and field plot protocals which include buffer zones and tools disinfection. The bacterium does not appear to proliferate outside the host plant. In addition, regular monitoring for the recombinant bacterium will ensure that if it spreads to plants at the edge of the test plots, it will be detected.

4. Dissemination of *C. xyli* subsp. *cynodontis* can occur in seed, so all seed not used for research purposes (in

containment) will be destroyed, preventing transfer by this mechanism.

5. Data have been provided by the company to demonstrate that the probability of transfer of the delta-endotoxin gene from the recombinant bacterium to other micro-organisms is extremely remote.

6. The recombinant bacterium has a relatively low order of toxicity to susceptible insects. The field test plots are very small. Therefore, the introduction of the recombinant bacterium poses no significant impact on susceptible insect populations.

7. There were no listed (January 1, 1989, 50 CFR 17.11 and 17.12) threatened or endangered insect species present in the test sites in Illinois, Maryland, Nebraska, or Minnesota, so the introduction of the recombinant bacterium poses no risk to these threatened insects.

8. The inherent properties of *C. xyli* subsp. *cynodontis* and the recombinant bacterium indicate that there are no human health risks. The bacterium does not grow at human body temperature. The bacterium has been shown not to be pathogenic or toxic in mammalian tests. In addition, all crops will be used for research purposes or destroyed so that there will be no dietary exposure to humans.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, 4 FR 51272–51274, August 31, 1979).

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

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspeciton Service.

[FR Doc. 89–12085 Filed 5–18–89; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 89–070]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing in the State of California of genetically engineered tomato plants modified to be tolerant to the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 88–351–12.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test genetically engineered tomato plants modified to be tolerant to the herbicide glyphosate.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tomato plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvyl-3-phosophoshikimate synthase that is not inhibited by the herbicide glyphosate has been inserted into the tomato chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is sufficiently distant from any sexually compatible plants with which it might cross-pollinate.

2. Neither the 5-enolpyruvyl-3-phosophoshikimate synthase gene itself, nor its gene product, confers on tomato plants any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The micro-organism from which the 5-enolpyruvyl-3-phosophoshikimate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvyl-3-phosophoshikimate synthase gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato in the ability to be disseminated or to become established in the environment.

5. The vector used to transfer the 5-enolpyruvyl-3-phosophoshikimate synthase gene to tomato plants has been evaluated for its use in this specific

experiment, and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the 5-enolpyruvyl-3-phosophoshikimate synthase gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed tomato plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The field test site is very small (135 feet wide by 220 feet long) and physically isolated by a chain-link fence and a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines for Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

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

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–12093 Filed 5–18–89; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 89–080]

Secretary's Advisory Committee for Swine Health Protection; Meeting

Agency: Animal and Plant Health Inspection Service, USDA.

Action: Notice of meeting.

Summary: We are giving notice of a meeting of the Secretary's Advisory Committee for Swine Health Protection.

Place, Date, and Time of Meeting: The meeting will be held in Room 104A of the Administration Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, on June 8, 1989, from 8:15 a.m. to 4:30 p.m.

For Further Information Contact: Dr. Dale C. Gigstad, Senior Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, Room 735–A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

Supplementary Information: The purpose of the Secretary's Advisory Committee for Swine Health Protection (Committee) is to advise the Secretary of Agriculture concerning matters within the scope of the Swine Health Protection Act. We anticipate that, during the meeting, members of the Committee and the public will provide valuable information, opinions, and recommendations concerning the policies and procedures of the Swine Health Protection Program.

The meeting will be open to the public. Anyone interested in the Swine Health Protection Program should send their written statements concerning the program to Dr. Dale C. Gigstad at the address listed in this document, or present them at the time of the meeting. Please refer to Docket Number 89–080 when submitting your statements.

Done in Washington, DC, this 15th day of May 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–12094 Filed 5–18–89; 8:45 am]

BILLING CODE 3410–34–M

Federal Grain Inspection Service

Request for Designation Applicants to Provide Official Services in the State of Florida

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), the Administrator of the Service is authorized to designate official agencies to perform official services under the Act. This notice announces that the Service is requesting applicants for designation as an official agency for the conduct of all or specified functions involved in official grain inspection in the State of Florida. The Service has been and will continue to provide such official services, in the geographic area specified below, until a decision can be made in this matter.

DATE: Applications must be postmarked on or before June 19, 1989.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

This notice announces that the Service is requesting applicants for designation as an official agency for the conduct of all or specified functions involved in official grain inspection in the State of Florida. It has been determined that there is a need for such services within the State of Florida. The Service has been and will continue to provide such official services, in the geographic area specified below, until a decision can be made in this matter.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. Accordingly, the designation in the specified geographic area will not exceed a 3-year period.

The geographic area which may be assigned to the applicant selected for designation is as follows: the entire State of Florida, except those export port locations within the State.

Interested parties are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act, § 800.196(d) of the regulations issued thereunder. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 15, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89–12095 Filed 5–18–89; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Proposed Amendment to the Forest Land and Resource Management Plan for the Grand Mesa, Uncompahgre and Gunnision National Forests; Delta Co. et. al; to Hold Public Open House

In the matter of Delta, Garfield, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, San Juan and San Miguel Counties, Colorado.

Notice is hereby given that the Grand Mesa, Uncompahgre and Gunnison National Forests will hold public "open houses" as a part of the public comment period in the matter of the Draft Supplemental EIS and Proposed Amendment to the Forest Land and Resource Management Plan.

A series of seven "open houses" will be held to encourage participation in the Forest Plan amendment process. All open houses will be held from 1:00 to 7:00 p.m. and will take place on the following dates and locations:

6/19/89 Grand Junction: Forest Service Office, 764 Horizon Drive, Grand Junction, CO

6/20/89 Paonia: Forest Service Office, North Rio Grande Street, Paonia, CO

6/20/89 Collbran: Forest Service Office, 216 High Street, Collbran, CO

6/21/89 Denver: Forest Service Office, 11177 W. 8th Avenue, Lakewood, CO

6/22/89 Gunnison: Forest Service Office, 216 Colorado, Gunnison, CO

6/22/89 Norwood: Forest Service Office, 1760 Grande, Norwood, CO

6/23/89 Montrose: Forest Service Office, 2505 S. Townsend, Montrose, CO

The ninety day public comment period will close on August 25, 1989.

Gary E. Cargill, Regional Forest, Rocky Mountain Region, is the responsible official.

Please contact Nick Greater, Forest Planner, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado, telephone (303) 874–7691, for further information or copies of the documents.

Date: May 11, 1989.

Richard E. Greffenius,

Forest Supervisor.

[FR Doc. 89–12050 Filed 5–18–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held June 8, 1989, at 10:30 a.m., in the Herbert C. Hoover Building, Room 1617–F, 14th Street and Constitution Avenue NW., Washington DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

The Committee will meet only in Executive Session to discuss matters properly classifed under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Cental Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202–377–4959.

Date: May 15, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–12010 Filed 5–18–89; 8:45 am]

BILLING CODE 3510–DT–M

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A (partially closed) meeting of the President's Export Council Subcommittee on Export Administration will be held Wednesday, June 14, 1989, 9:00 a.m. to 3:00 p.m., U.S. Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Open Session: 9:00–11:45 a.m. Briefings by Commerce officials on matter relating to export control. Selected reports by Committee chairpersons.

Executive Sessions: 1:30–3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1979, as amended. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 27, 1987, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Subcommittee, dealing with the classified materials listed in 5 U.S.C 552b(c)(1), shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC.

For further information, contact Betty Ferrell, (202) 377–2583.

Date: May 11, 1989.

James M. LeMunyon,

Deputy Assistant Secretary, for Export Administration.

[FR Doc. 89–12009 Filed 5–18–89; 8:45 am]

BILLING CODE 3510–DT–M

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer Systems Security and Privacy Advisory Board will meet Wednesday, May 31, 1989 from 8:30 a.m. to 5:00 p.m. and Tuesday, June 1, 1989 from 8:30 a.m. to 4:00 p.m. This is the second meeting of the Advisory Board established by the Computer Security Act of 1987 to advise the Secretary of Commerce and NIST on security and privacy issues pertaining to Federal computer systems. Discussions on NIST's computer security budget, scheduled to begin at 10:00 a.m. and ending at 5:00 p.m. on May 31, 1989 will be closed.

DATES: The meeting will be held on May 31, 1989, from 8:30 a.m. to 5:00 p.m. and June 1, 1989 from 8:30 a.m. to 4:00 p.m. Closed sessions will be held from 10:00 a.m. to 5:00 p.m. on May 31, 1989.

ADDRESS: The meeting wil take place at the Maritime Institute of Technology and Graduate Studies, 5700 Hammonds Ferry Road, Linthicum Heights, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security and Advisory Board Secretary, National Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B–154, Gaithersburg, MD, 20899, telephone: (301) 975–3240.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 15, 1989, that the portion of this meeting which involves examination of out-year computer security budget for NIST may be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by section 5(c) of the Government in Sunshine Act, Pub. L. 94–409. Two portions of the meeting, which involve discussions of future NIST budget requests, may be closed to the public in accordance with section 552(b)(9)(B) of Title 5, United States Code, since that portion of the meeting is likely to divulge matters that may significantly frustrate implementation of proposed agency action. All other portions of the meeting will be open to the public.

Approximately fifteen seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come, first-served basis. Written statements may be submitted to the Board at any time before or after the meeting and can be directed to Computer Systems Security and Privacy Advisory Board, National Computer Systems Laboratory, Building 225, Room B–154, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899.

Raymond G. Kammer,

Acting Director.

Date: May 16, 1989.

[FR Doc. 89–12075 Filed 5–18–89; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Rights in Data and Copyrights.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Office of Federal Acquisition and Regulatory Policy, (202) 523–3856.

SUPPLEMENTARY INFORMATION: a. *Purpose*: Rights in Data is a regulation which concerns the rights of the Government and organizations with which the Government contracts to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data, and to insure that data developed with public funds is available to the public. The information collection burdens and recordkeeping requirements included in this regulation fall into four categories.

a. A provision which is to be included in solicitations where the proposer would identify any proprietary data he would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

b. Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluation of work results, or if software, to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software, and given, that the Government would need to see that data in order to determine the extent of the work.

c. A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract are complete, accurate and comply with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification.

d. The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). This clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements if to insure that the Government can fully evaluate the research in order to ascertain future activities, and to insure that the research was completed and fully reported, as well as to give the public on opportunity to assess the research results and secure any additional

information. All data covered by this clause is unlimited rights data, for which the Government paid.

e. Paragraph (d) of the Rights in Data-General clause outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered under civilian agency contracts, limited rights data or restricted computer software is rarely if ever delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

Under the procedures established for development of the FAR, agency and public comments were solicited and each comment was addressed before finalization of the text. The comments which were received were for the most part from educational institutions, which stated that requiring their investigators to keep records of unlimited rights data for three years after acceptance of deliverables was unresonable, in that such investigators in reality do not segregate their research by contract, but rather combine it with other data in order to continue their research. In light of this, the proposed rule was changed to state that the Additional Data Requirements clause would not be placed in contracts for basic or applied research with educational institutions—where the value was $500,000 or less. The $500,00 threshold was adopted after surveying the major civilian R&D agencies, whose data suggested that an average R&D contract was $250,000—$300,000; in order to be commensurate with other clause thresholds, (e.g., small business subcontracting) the $500,000 was chosen. Thus, for most R&D contracts with universities, no recordkeeping is required.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 1,100; responses per respondent, 1; total annual responses, 1,100; hours per response, 2.7; and total response burden hours, 2,970.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0090, Rights in Data and Copyrights.

Dated: May 9, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-12027 Filed 5-18-89; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Low Observable Technology; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology will meet in closed session on June 7–8 and June 27–28, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-12018 Filed 5-18-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 12, 1989.

The USAF Scientific Advisory Board AD Hoc Committee on Conventional Munitions will meet on 10–21 July, 1989 at the Air Force Academy, Colorado Springs, Colorado.

The purpose of this meeting is to deliberate on the summer study, prepare the briefing to the Chief of Staff, and to complete the first draft of the report on conventional munitions. This meeting will involve discussions of classified defense matters listed in section 552(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariate at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-12024 Filed 5-18-89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 12, 1989.

The USAF Scientific Advisory Board AD Hoc Committee on Conventional Munitions will meet on 13–15 June, 1989 at the Pentagon, Washington, DC.

The purpose of this meeting is to prepare for the interim briefing on conventional munitions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariate at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-12025 Filed 5-18-89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 11, 1989.

The USAF Scientific Advisory Board Advisory Group (DAG) for Electronic Security Command (ESC) will meet 5–6 Jun 89 from 8:00 a.m. to 5:00 p.m. at San Antonio, TX.

The purpose of this meeting is to address long range planning and ESC ROADMAPS (follow-up on discussions at the last meeting); technology assessments for their three mission areas; intelligence security; and, electronic combat. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-12026 Filed 5-18-89; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers; Department of the Army

[Permit Application No. 10117]

Intention To Prepare Environmental Impact Report and Environmental Impact Statement on Channel Improvements, San Joaquin Delta, California

The Corps of Engineers, Sacramento District, will prepare a joint EIR/EIS for

a regulatory permit to construct channel improvements in navigable waters of the U.S. The California Department of Water Resources, will be the lead agency for the EIR. The project will involve improving conveyance capacities of various channels in the northern area of the Sacramento-San Joaquin Delta, about 100 miles east of San Francisco.

Agency: Sacramento District, U.S. Army Corps of Engineers, Department of Defense.

Action: Notice of Intent to prepare EIR/EIS.

Summary: The California Department of Water Resources intends to construct channel improvements in navigable waters of the U.S. The improvements will consist of new levees, channel dredging, channel realignments, and channel widening using levee setbacks. These channel improvements will alleviate flooding in the North Delta area, reduce reverse flows in the lower San Joaquin River, improve water quality, reduce fishery impacts, and improve water supply reliability.

The Corps of Engineers must issue a permit for the proposed work under Section 10 of the Rivers and Harbors Act, and section 404 of the Clean Water Act.

New levees will have a minimum cross section of 2:1 water side slopes, 3:1 land side slopes, a crown width of 16.0 feet with 0.5 feet of gravel surfacing, and freeboard above the 100 year flood elevation of 1.5 feet in agricultural areas and 3.0 feet in urban areas.

Alternatives: A No Action alternative and alternatives involving channel improvements to various combinations of the channels listed below will be studied. Alternative methods of channel improvements to be considered for each channel will include no action, dredging, and levee setbacks with new levees. The involved channels are:

1. Snodgrass Slough and Deadhorse Cut, south of the Delta Cross Channel
2. Mokelumne river, downstream from I–5 bridge
3. North Fork Mokelumne River
4. South Fork Mokelumne River
5. Little Potato and Little Connection Sloughs

Other alternatives identified during the scoping process will also be considered.

The following significant issues will be discussed in the EIR/EIS:

1. Flood Control
2. Water Quality and Quantity
3. Fisheries
4. Wildlife and Native Vegetation
5. Land Use and Agriculture
6. Geology and Soils
7. Recreation and Navigation
8. Cultural Resources
9. Social and Economic Effects
10. Air Quality and Noise

Other issues identified during the scoping process will be discussed in the EIR/EIS. A Public notice describing the project has been sent to all known interested parties requesting comments on the project and on the scope of the EIR/EIS.

Scoping Process: Public scoping meetings were held in Walnut Grove, California, and Sacramento, California, in August and September of 1987. The Public Notice inviting further written comments on the scope of the EIR/EIS is dated May 17, 1989 and has a 30 day comment period.

We estimate the draft EIR/EIS will be published by January 1990. Questions concerning the proposed actions and EIR/EIS should be directed to Tom Coe, Regulatory Section, U.S. Army Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814, telephone (916) 551–2270. Questions concerning the EIR process should be directed to Stein Buer, California Department of Water Resources, Planning Division, P.O. Box 942836, Sacramento, California, 94236–0001, telephone (916) 445–6809.

Jack A. Le Cuyer,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89–12052 Filed 5–18–89; 8:45 am]

BILLING CODE 3710-EH-M

Department of the Navy

Chief of Naval Operations; Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet June 5–6, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. The entire agenda for the meeting will consist of discussions of key technology efforts with the potential for breakthroughs that could have an acute impact on naval forces. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: May 16, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–12034 Filed 5–18–89; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisons of the Federal Advisory Commitee Act (5 U.S.C. App), notice is hereby given that the Naval Research Advisory Committee Panel on International Research and Development will meet on June 13, 1989. The meeting will be held at the General Dynamics Corporation, 1525 Wilson Blvd., Rosslyn, Virginia. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on June 13, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to ongoing international research and development programs. The agenda will include briefings and discussions related to program objectives, the impact of current legislation, cooperative R&D programs, and production and industrial base impacts. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening and portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For futher information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street,

Arlington, VA 22217–5000, Telephone Number: (202) 696–4488.

Date: May 16, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–12035 Filed 5–18–89; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP 89–1320–000 et al.]

Panhandle Eastern Pipeline Co., et al.; Natural Gas Certificate Filings

May 15, 1989.

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipeline Company

[Docket No. CP89–1320–000]

Take notice that on May 5, 1989, Panhandle Eastern Pipeline Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1320–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, for authorization to transport, on a firm basis, natural gas under its blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act on behalf of Bethlehem Steel Corporation (Bethlehem), a shipper and end user, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport up to a maximum daily quantity of 15,776 Dt on a peak day and average day, and estimates the annual volume to be 5,758,240 Dt.

Panhandle explains that service commenced April 1, 1989, under § 284.223(a) of the Commission's regulations, as reported in Docket No. ST89–3171–000.

Comment date: June 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP89–1329–000]

Take notice that on May 5, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89–1329–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–316–000 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 inspection.

Southern proposes to transport natural gas for TXG Gas Marketing Company (TXG) pursuant to Rate Schedule IT. Southern explains that service commenced March 8, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–2892. Southern explains that the peak day quantity would be 27,100 MMBtu, the average daily quantity would be 5,000 MMBtu, and that the annual quantity would be 1,825,000 MMBtu. Southern explains that it would receive natural gas for TXG's account at existing receipt points in Louisiana, offshore Louisiana, Texas, offshore Texas, Alabama and Mississippi for delivery in Louisiana, offshore Louisiana, Texas and Alabama.

Comment date: June 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Company

[Docket No. CP89–1332–000]

Take notice that on May 8, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89–1332–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–316–000 pursuant to Section 78 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to inspection.

Southern proposes to transport natural gas for Citizens Gas Supply Corporation (Citizens) pursuant to Rate Schedule IT. Southern explains that service commenced March 10, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–2895. Southern explains that the peak day quantity would be 35,000 MMBtu, the average daily quantity would be 34,520 MMBtu, and that the annual quantity would be 12,600,000 MMBtu. Southern explains that it would receive natural gas for Citizens' account at existing receipt points in Louisiana, offshore Louisiana, Texas, offshore Texas, Alabama and Mississippi for delivery in Louisiana, offshore Louisiana, Texas and Alabama.

Comment date: June 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP89–1335–000]

Take notice that on May 8, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1335–000 a request for §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for BP Marketing Company (BP Gas) under the blanket certificate issued in Docket No. CP86–578–000 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.

Northwest states that pursuant to a Transportation Agreement dated October 24, 1989, as amended December 5, 1988, it proposes to transport up to 60,000 MMBtu per day of natural gas for BP Gas under Rate Schedule TI–1, for a term continuing to March 25, 1990 and month to month thereafter.

Northwest will transport the subject gas through its system from any transportation receipt point on its system to any transportation delivery point on its system.

Northwest states that the maximum day, average day and annual transportation volumes would be approximately 60,000 MMBtu, 100 MMBtu, and 35,500 MMBtu, respectively.

Northwest further states that it commenced March 23, 1989, as reported in Docket No. ST89–3070–000.

Comment date: June 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89–1322–000]

Take notice that on May 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77152–1478, filed in Docket No. CP89–1322–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Centran Corporation (Centran), 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 the public inspection.

United proposes to transport, on an interruptible basis, up to 10,039 MMBtu per day for Centran. United states that construction of facilities would not be required to provide the proposed service.

United further states that the maximum day, average day, and annual transportation volumes would be approximately 10,039 MMBtu, 10,039 MMBtu and 3,664,235 MMBtu, respectively.

United advises that Service under § 284.223(a) commenced March 23, 1989, as reported in Docket No. ST89-3089.

Comment date: June 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for 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. 89-12048 Filed 5-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

May 15, 1989

Take notice that K N Energy, Inc. ("K N") on May 9, 1989 tendered for filing a quarterly PGA proposing changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (Section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, Third Revised Volume No. 1 to reflect changes in the Current Adjustment. The proposed changes would decrease the commodity rate under each of K N Energy's jurisdictional rate schedules, exclusive of IOR-1 and IOR-2, by 0.44¢ per Mcf. Rates under Rate Schedules IOR-1 and IOR-2 are proposed to increase by 0.75¢ per Mcf and 1.34¢ per Mcf, respectively. K N has also revised the rates of its various rate schedules to reflect an increase in D1 and D2 demand costs as set forth in K N's transmittal letter and tariff sheets. K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending August 31, 1989. The proposed effective date for the rate changes is June 1, 1989.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should on or before May 22, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, a petition to intervene or a protest in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the approppriate 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 part in any hearing therein must file a petition to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12049 Filed 5-18-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of March 17 Through March 24, 1989

During the Week of March 17 through March 24, 1989, the applications listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 12, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 17 through March 24, 1989]

Date	Name and Location of Applicant	Case No.	Type of Submission
3/17/89	Southwestern States Marketing Corporation, Abilene, TX	KRZ-0092	Interlocutory If granted: The Office of Hearings and Appeals would either permit the Trustee in Bankruptcy for the Estate of Southwestern States Marketing Corporation to submit additional evidence in the enforcement proceeding involving Southwestern and Kenneth Walker or to modify a November 21, 1986 Decision and Order.
3/24/89	Kenneth Walker, Abilene, TX	KRZ-0093	Interlocutory If granted: The Office of Hearings and Appeals would modify the December 30, 1985 Decision and Order (Case Nos. HRZ-0263, HRD-0268 and HRH-0268) issued to Kenneth Walker to permit him additional discovery in the remedial order proceeding involving Southwestern States Marketing Corporation (Case No. HRO-0258).

REFUND APPLICATIONS RECEIVED

[Week of March 17 to March 24, 1989]

Date Received	Name of Refund Proceeding/Name of Refund Applicant	Case Number
3/18/89	The Oil Well Company *et al.*	RF314-24
3/18/89	Getty Serv Stat of Roslinda.	RF265-2781
3/18/89	Skelly Service Station	RF265-2782
3/18/89	Butler's Getty	RF265-2783
3/18/89	Bozzer's Getty	RF265-2784
3/18/89	Crystal Skelly Service	RF265-2785
3/18/89	Therres Brothers Skelly.	RF265-2786
3/18/89	Joe's Getty Oil Service Station.	RF265-2787
3/18/89	Falvey's Getty Service	RF265-2788
3/18/89	Joe's Getty	RF265-2789
3/18/89	Locke's Getty	RF265-2790
3/18/89	Mac's Getty	RF265-2791
3/18/89	Roger's Getty	RF265-2792
3/18/89	Roger's Getty of Norrist.	RF265-2793
3/18/89	DiPalo's Getty	RF265-2794
3/18/89	Bazyk Getty Service Center.	RF265-2795
3/18/89	Crouse Fuel Service	RF265-2796
3/18/89	Deacon Skelly	RF265-2797
3/18/89	Pleasant View Truck Stop.	RF265-2798
3/18/89	Jim Hunt's Getty	RF265-2799
3/18/89	Bob McMillan's Getty	RF265-2800
3/18/89	Daune D. Kuss	RF265-2801
3/18/89	Minnetonka Skelly Service.	RF265-2802
3/18/89	Larry's Skelly Serv. Stat.	RF265-2803
3/18/89	Lundsten's Skelly Service.	RF265-2804
3/18/89	Midway Skelly Service	RF265-2805
3/18/89	Earl's Skelly	RF265-2806
3/20/89	Putnam Fuels, Inc.	RF313-101
3/20/89	Rockville Crown	RF313-102
3/20/89	Russell Greenley	RC272-21
3/20/89	City of Marion, Kansas	RC272-22
3/20/89	Pittsburg Public Schools.	RC272-23
3/20/89	T. J. Lair	RC272-24
3/20/89	Donald L. Tiedeman	RC272-25
3/20/89	Leo Taylor	RC272-26
3/20/89	Avery & Grace Bates	RC272-27
3/20/89	Leo H. Williams	RC272-28
3/20/89	Olaf D. Strommun	RC272-29
3/20/89	David L. Dunkel	RC272-30
3/20/89	Herbert Sugps	RC272-31
3/20/89	B & L Trucking Company.	RC272-32
3/20/89	Harry K. Scott	RC272-33
3/20/89	Willie Darrow & J. P. Hunt.	RC272-34
3/20/89	Paul E. Demuth	RD272-75035
3/20/89	Ligon Specialized Hauler, Inc.	RD272-75150
3/20/89	McLaughlin & Schultz, Inc.	RD272-75223
3/20/89	State Escrow Distribution.	RF302-6
3/20/89	Marshall Oil Company, Inc.	RF314-25
3/21/89	Lyman Oil Company, Inc.	RF313-103
3/23/89	Headley Service Station.	RF313-104
3/24/89	Jet-Way Service Station.	RF313-105
3/24/89	M. P. Hughes Oil Company.	RF313-106
3/17/89 thru 3/24/89	Gulf Oil Refund Applications Received.	RF300-10738 thru RF300-10757

REFUND APPLICATIONS RECEIVED—Continued

[Week of March 17 to March 24, 1989]

Date Received	Name of Refund Proceeding/Name of Refund Applicant	Case Number
3/17/89 thru 3/24/89	Crude Oil Refund Applications Received.	RF272-75401 thru RF272-75411
3/17/89 thru 3/24/89	Murphy Refund Applications Received.	RF309-1014 thru RF309-1064
3/17/89 thru 3/24/89	Atlantic Richfield Refund Applications Received.	RF304-8155 thru RF304-8209
3/17/89 thru 3/24/89	Exxon Refund Applications Received.	RF307-9685 thru RF307-9705
3/17/89 thru 3/24/89	Shell Refund Applications Received.	RF315-4685 thru RF315-4867

[FR Doc. 89-12103 Filed 5-18-89; 8:45 am]

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Issuance of Decisions and Orders During Week of February 27 Through March 3, 1989

During the week of February 27 through March 3, 1989, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

A. C. Widenhouse, Inc. et al., 02/27/89; RF272-8329 et al., RD272-8329 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by nine interstate common carriers (carriers) in the Subpart V crude oil refund proceeding. A group of States objected to the carriers' applications on two grounds: (1) That the economy generally allows the members of the trucking industry to pass through some portion of increased costs to customers via higher prices; and (2) that the ICC fuel surcharges implemented during the price control period allowed the carriers to pass through increased fuel costs. The States argued that this evidence was sufficient to rebut the end-user presumption for the applicants, and OHA should therefore deny the applications. OHA granted the refunds for all nine applicants, determining that the States had failed to show that these particular applicants passed-through increased fuel costs. The total refund granted in this Decision and Order was $15,401.

B & B Trucking, 02/27/89, RF272-87

The DOE issued a Decision and Order considering an Application for Refund filed by B & B Trucking in the DOE's Subpart V crude oil refund proceeding. B& B was a private carrier who was under contract to carry mail for the U.S. Postal Service. According to information from the Postal Service, B & B received direct reimbursement for all of its fuel costs and therefore could not have experienced any injury as a result of crude oil overcharges. Accordingly, B & B's Application for Refund was denied.

Bob's Oil Co./South Dakota, 03/02/89, RQ38-508.

The DOE modified a prior determination and reduced a refund to the State of South Dakota from $2,159 to $1,079, since the State was eligible for a refund only at that lesser amount.

CARCO RENTALS, INC., 03/03/89, RF272-36020

The DOE issued a Decision and Order considering an Application for Refund in the Subpart V crude oil refund proceedings filed by a vehicle leasing company, which is considered by the DOE to be a retailer of petroleum products. Because the applicant, Carco Rentals, Inc., did not demonstrate that it was injured by the crude oil overcharges, it was found to be ineligible for a crude oil refund.

Cherne Contracting Corporation, 03/01/89, RA272-3

The DOE issued a Supplemental Order correcting a crude oil refund issued to Cherne Contracting Corporation and granting the firm an additional refund of $15.

Crown Central Petroleum Corp./Capitol Oil Co., Inc. et al., 02/28/89, RF313-10 et al.

The DOE issued a Decision and Order considering applications filed by three purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown and the applications were granted using a presumption of injury methodology. The total amount of the refunds approved in this Decision was $22,139, representing $19,168 in principal plus $2,971 in accrued interest.

Crown Central Petroleum Corp./Severna Park Crown, et al., 02/28/89, RF313-50 et al.

The DOE issued a Decision and Order considering applications filed by three purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund

proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown and refunds were granted using a presumption of injury methodology. The total amount of the refunds approved in this Decision was $31,786, representing $27,520 in principal plus $4,266 in accrued interest.

Dorchester Gas Corp./Celanese Chemical Co., 03/03/89, RF253–14

The DOE issued a Decision and Order considering an Application for Refund filed by Celanese Chemical Company in the Dorchester Gas Corporation refund proceeding. Celanese established that it purchased 25,189,562 gallons of Dorchester product and, as an ender-user of that product, was presumed injured by alleged Dorchester overcharges. Accordingly, the Celanese application was granted and the firm received a total refund of $344,593.

Dorchester Gas Corp./Top–O'–Texas Butane Co. et al. 03/02/89, RF253–16 et al.

The DOE issued a Decision and Order considering six Applications for Refund in the Dorchester Gas Corporation refund proceeding filed by retailers or resellers of Dorchester petroleum products. Each of the applicants claimed less than $5,000 and was therefore eligible for a refund based on the small claims presumption of injury. The total refund approved was $32,305.

Exxon Corp./Burkhart's Exxon et al., 03/03/89, RF307–200 et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision was $3,401 ($2,917 principal, plus $484 interest).

Exxon Corporation/Lindstedt Oil Co. et al., 03/02/89, RF307–3514 et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed in the Exxon Corporation special refund proceeding. Each applicant purchased directly from Exxon and was a reseller of Exxon products. Each applicant choose to accept a refund based on the applicable injury presumption. The sum of the refunds granted in this Decision is $60,069 ($51,518 in principal and $8,551 in interest).

Exxon Corporation/Revere Copper and Brass Inc., et al., 03/02/89, RF307–4002 et al.

The DOE issued a Decision and Order concerning 81 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user of a reseller whose allocable share was less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $60,517 ($51,903 in principal and $8,614 in interest).

Fort Madison Community School District et al., 02/28/89, RF272–35389 et al.

The DOE issued a Decision and Order approving Applications for Refund submitted by 28 claimants in the crude oil overcharge refund proceeding. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. The DOE granted the claimants refunds totalling $19,745.

Gary Community School Corp. et al., 02/28/89, RF272–28591 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to five end-users of refined petroleum products. The sum of the refunds granted in this Decision is $14,263.

Gulf Oil Corporation/Blodgett Oil Co., Inc., 03/02/89, RF300–515, RF300–516

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Blodgett Oil Company, Inc. The applications were approved under the 40 percent presumption of injury. In granting the claims, the DOE took into account a Gulf refund of $436 previously granted to Blodgett. The total refund granted in this Decision, which includes principal and interest, is $13,488.

Gulf Oil Corporation/Cason Co., Inc., 03/01/89, RF300–617

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Cason Companies, Inc., a reseller and consignee of covered Gulf products. Because the firm's combined allocable shares for its reseller gallons and 10 percent of its consignee gallons amounted to less than $5,000, it was presumed injured. The refund granted was $3,834.

Gulf Oil Corporation/Finnegan's Inc., Finnegan's of Virginia, Inc., 03/03/89, RF300–5190, RF300–5191

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Finnegan's, Inc. and Finnegan's of Virginia, Inc. Because both firms were under common ownership during the consent order period, the DOE cnsidered both applications when applying the presumptions of injury. The Applications were approved under the small claims presumption of injury. The refund granted in this Decision, which includes both principal and interest, is $6,484.

Gulf Oil Corporation/Four A'S Enterprises Inc. et al., 02/27/89, RF300–595 et al.

The DOE issued a Decision and Order concerning eight Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, is $58,443.

Gulf Oil Corporation/Estel R. Brooks, 03/01/89, RF300–10703

The DOE rescinded a $979 refund issued to Estel R. Brooks, c/o Kirk Hornbeck, in the Gulf Oil Corporation special refund proceeding. The DOE determined that since Mr. Brooks owned the business when the relevant Gulf purchases were made, Mr. Hornbeck was not the rightful recipient of the refund check.

Gulf Oil Corporation/J. A. Karmilowicz, Inc., T/A F.A. Madden & Son, W. S. Peeney, Inc., 02/27/89, RF300–4142, RF300–4143

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by J. A. Karmilowicz, Inc. T/A F.A. Madden & Son and W. S. Peeney, Inc. Because the firms were under common ownership during the refund period, it was appropriate to consider them together when applying the presumptions of injury. The two firms collectively purchased 16,726,119 gallons as resellers, and Peeney distributed on consignment 44,233,477 gallons of covered Gulf products. The reseller claims were approved under the 40 percent injury presumption and the consignee claim was approved under the 10 percent presumption of injury for consignees. The sum of the refunds

granted in this Decision, which includes both principal and interest, is $9,224.

Gulf Oil Corporation/John A. Sparta et al., Inc., 03/02/89, RF300-201 et al.

The DOE issued a Decision and Order concerning 47 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $159,090.

Gulf Oil Corporation/Lambert Oil Company, Inc. J.C. Roberts, Jr., Inc., 03/01/89, RF300-4891, RF300-5580

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision was $12,968.

Gulf Oil Corporation/Morris Petroleum, Inc. 02/27/89, RF300-2200

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Morris Petroleum, Inc., a consignee and a reseller of Gulf refined products. Morris Petroleum elected to based its refund on the appropriate presumptions of injury. Since Morris Petroleum's allocable share was less than $5,000, it was not required to provide a detailed demonstration that it absorbed the alleged overcharges. The total refund granted to Morris Petroleum was $2,188.

Gulf Oil Corporation/Patrick's Gulf Service, 03/01/89, RF300-10704

The DOE learned that it has granted duplicate refunds to Patrick's Gulf Service in the Gulf Oil Corporation special refund proceeding. Accordingly, the DOE rescinded the second refund to Patrick's amounting to $2,880.

Gulf Oil Corporation/Plaza Gulf et al., 02/27/89, RF300-320 et al.

The DOE issued a Decision and Order concerning 28 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision was $41,870.

Herbert C. Knafla, 03/01/89, RC272-19

The DOE rescinded a $14 crude oil refund granted to Herbert C. Knafla because it was unable to ascertain the applicant's current correct address. No supplemental crude oil refund checks will be issued to him.

Matagorda County Farmers Cooperative, 03/01/89, RF272-23464

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Matagorda County Farmers Cooperative (Matagorda), an agricultural cooperative, based on purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Matagorda had resold the petroleum products to its members, and it certified that it would pass on any refund received to those members. Accordingly, Matagorda was granted a refund of $133.

Mathews Readymix, Inc. et al., 03/02/89, RF272-35700 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 29 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured as a result of the alleged crude oil overcharges. The sum of the refunds granted in this Decision was $10,801.

MCO Holdings, MGPC Inc./Farmers Union Central Exchange, Arrow Gas Service, Wyoming Gas and Oil Co., 03/01/89, RF312-4, RF312-5, RF312-7

The DOE issued a Decision and Order granting three Applications for Refund in the MCO Holdings, MGPC, Inc. special refund proceeding. Farmers Union Central Exchange, an agricultural cooperative, provided the necessary documentation of its purchases and the required certification for cooperatives that it would pass the refund through to its member-owners. Accordingly, it was granted a refund equal to its full allocable share, $22,633, plus interest of $3,764. Arrow Gas Service, a reseller of MGPC products, chose to limit its refund to 40 percent of its allocable share, and received $8,626, plus $1,434 in interest. Wyoming Gas and Oil Co. was a reseller of MGPC products whose allocable share was less than $5,000. Accordingly, based on the small claims injury presumption, it received a refund of $4,486, plus $746 in interest.

Murphy Oil Corp./Superior Water, Light & Power Co., 03/01/89, RF309-500

The DOE issued a Decision and Order granting an Application for Refund filed by the Superior Water, Light, and Power Company in the Murphy Oil Corporation special refund proceeding. Superior, a purchaser and end-user of Murphy products, stated that it would notify the appropriate regulatory body of any refund received, and would pass through the full amount of the refund to its customers. Accordingly, it was not required to show injury. The total refund approved in this Decision was $12,021, consisting of $10,508 in principal and $1,513 in accrued interest.

Roy E. Berrier and Sons Coal and Oil, 02/27/89, RF272-1830

The DOE issued a Decision and Order concerning an Application for Refund in the Subpart V crude oil refund proceedings filed by Roy E. Berrier and Sons Coal and Oil. Since Berrier, a petroleum products reseller, did not submit any showing that it was injured by crude oil overcharges, its refund application was denied.

Schaefer Equipment, Inc., 02/28/89, RF272-19657

The DOE issued a Decision and Order granting a refund from crude oil overcharged funds to Schaefer Equipment, Inc., based on Schaefer's purchases of refined petroleum products during the period August 19, 1973 through Janury 27, 1981. Schafer, an end-user of the products, estimated purchases of 560,399 gallons of petroleum products, including quench oil. The DOE determined that quench oil, which is used in steel mills to cool hot metal, is refined from crude oil, and thus, is an eligible product for purposes of the Subpart V crude oil refund proceedings. The amount of the refund granted in this Decision was $112.

Total Petroleum, Inc., Conover Oil Co. Inc. et al., 03/01/89, RF310-189 et al.

The DOE issued a Decision and Order concerning Applications for Refund from a consent order fund made available by Total Petroleum, Inc., which were filed by 22 purchasers of Total motor gasoline and/or No. 2 oils. Each of the applicants was either a reseller whose allocable share was no greater than $5,000 or an end-user. These claimants were therefore not required to demonstrate injury. The DOE granted refunds in this proceeding which total $41,510 ($35,703 principal plus $5,807 interest).

Dismissals

The following submissions were dismissed:

Name	Case No.
Adams Gulf Servicenter	RF300-8973
Archie's Gulf	RF300-7804
Bole Oil Company	RF300-8504
Cherne Contracting Corp	RF272-58189
City of Florence	RF272-18182
City of Stamford	RF307-986
Earls Place *et al.* (see attached list).	RF300-7025
Frank's Arco	RF304-2573

Name	Case No.
H.M. Allen, Jr	RF307-7245
Harrison County Board of Education.	RF304-1940
Ingleside Arco	RF304-3670
Intercity Petroleum Marketers, Inc	RF300-10380
J.H. Alexander's Arco	RF304-3842
Mansfield Oil Company of Gainesville, Inc.	RF309-365
Maxine Wyatt	RF307-990
Natali's Gulf Service	RF300-10130
Platt's Gulf *et al* (see attached list)	RF300-7305
Rocco A. Cerretto	RF304-2505
	RF304-5767
Schildberg Construction Co., Inc	RF272-75246
Yaeger Oil Company, Inc	RF304-3767

Case No.	Name of applicant
RF300-7025	Earls Place.
RF300-7311	Wimps Service Center.
RF300-7313	Robert Kirkland Store.
RF300-7334	Johns Grocery.
RF300-7339	J & R Gulf.
RF300-7340	Iverson Gulf.
RF300-7341	IRA Grocery White.
RF300-7344	Horns Corner Grocery.
RF300-7347	New Twin Oak Service Station.
RF300-7353	Carpenters Grocery & Repair.
RF300-7634	Hawkins Gulf & Restaurant.
RF300-7656	East Bay Mart & Marina.
RF300-7680	Carrier Excavation & Foundation.
RF300-7686	Torboro Int. Truck Sales.
RF300-7695	Walnut Creek Station.
RF300-7699	Travelers Service Station.
RF300-7703	Dutton Enterprises.
RF300-7713	Joe Holmes Fairway Gulf.
RF300-7738	East Memphis Gulf.
RF300-7747	Selbyville Getty Serv St.
RF300-7890	McKays Oil Company.
RF300-7913	Earl Grocery.
RF300-7915	Buckners Grocery & Service St.
RF300-7978	E NPT Gulf.
RF300-7980	O & J Service Inc.
RF300-7985	Jolly Pace.
RF300-7986	Etzels Gulf.
RF300-8001	Brookwood Gulf Center.
RF300-8451	Forest-Wehrle Inc.
RF300-8462	Midwest Specialty Co.
RF300-8482	Village Service Station.
RF300-8511	Keystone Tire.
RF300-8535	Frank Madonia.
RF300-8537	Marty Service Station.
RF300-8540	Matthew Automotive.
RF300-8542	Mertz Skelly Service.
RF300-8544	Tynan Service Center.
RF300-8568	Monte West Side Gulf.
RF300-9262	Manzer Petroleum.
RF300-9266	Tonys Getty Service.
RF300-9269	Charles J. Nelson Inc.
RF300-9294	Klatt Motors Inc.
RF300-9297	Manzer Petroleum.
RF300-9839	Marcus Oil and Supply.
RF300-9880	Maxson Service Station Inc.
RF300-9883	TJ Campbell Inc.
RF300-9887	Jenkins Service.
RF300-9897	Richfield Getty Service.
RF300-9900	Frank Getty Service.
RF300-9905	Central Station.
RF300-9907	John & Son Getty.
RF300-9912	Ketchum Inc.
RF300-9913	Rays Service.
RF300-9925	Crystal.
RF300-9949	JJ Getty Inc.
RF300-9950	Van Blarcom.
RF300-9952	Tomlisam Auto Service.
RF300-9953	Mikes Getty.
RF300-10238	Davis Tire & Battery.
RF300-10239	Ditter & Rolling Company.
RF300-10241	Keya Paha Coop Assn.

Case No.	Name of applicant
RF300-10242	Tri State Coop

March 2, 1989.

Case No.	Name of applicant
RF300-7305	Platt's Gulf.
RF300-7309	Grand Gulf.
RF300-7314	Johnson Grocery.
RF300-7315	J & M Grocery.
RF300-7321	Parkway Service Station.
RF300-7323	North Main Gulf.
RF300-7331	St. Martin Canal.
RF300-7355	Cherry Corner Store.
RF300-7362	A & M Service.
RF300-7365	Bicks Supere.
RF300-7366	Bob Service.
RF300-7369	Hedden Country Store.
RF300-7376	Brewer Grocery & Service Station.
RF300-7650	Archie's Quick Stop.
RF300-7678	Hamilton Oil Company.
RF300-7684	Dave's Auto Parts.
RF300-7706	Airway Gulf.
RF300-7711	Mitch & Bill Gulf Station.
RF300-7880	Furance Car Wash.
RF300-7887	Dave Oil Company.
RF300-7957	Clintonville Getty Service.
RF300-7958	Panorama Service.
RF300-7993	Blackmon Crystal Service.
RF300-7997	Robert Hug.
RF300-8452	Arena Service Center.
RF300-8475	Kings Grocery & Garage.
RF300-8499	Ray Oil Distributor.
RF300-8515	College Tire.
RF300-8520	Dad Rest & Gift Shop #2.
RF300-8528	Great Southern Mercantile Corp.
RF300-8533	Wayside Service Center.
RF300-8582	Mickey Service Center.
RF300-8583	A.G. Service.
RF300-8585	Kearny Mobil.
RF300-8588	Amatrudos Service Station.
RF300-9280	Alex Getty Service.
RF300-9868	Denius Oil.
RF300-9872	Krohn Foreign Car Service.
RF300-9885	Brown's Northgate.
RF300-9886	Jerrys Service.
RF300-9894	Auto Laundry.
RF300-9899	Schuster Service.
RF300-9936	Bull Getty.
RF300-9937	Bull Getty.
RF300-9938	Bull Getty.
RF300-9939	Bull Getty.
RF300-9941	Bull Getty.
RF300-9957	Strickland Getty.
RF300-9961	B T S Getty Service Center.
RF300-9965	Arlon Fuel Stop.
RF300-9970	Marshfield Oil Company, Inc.
RF300-9977	Bulls Getty.
RF300-9985	Argo Gulf.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 12, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-12100 Filed 5-18-89; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of March 20 Through March 24, 1989

During the week of March 20 through March 24, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Glen Milner, 3/24/89, KFA-0268

Glen Milner filed an Appeal from a determination issued by the Deputy Director of the Office of Intergovernmental and External Affairs of the Albuquerque Operations Office. In the reviewable portion of that determination, the Deputy Director withheld, pursuant to Exemption 5 of the Freedom of Information Act, information from an internal DOE memorandum concerning a meeting with various members of the DOE's Transportation Safeguards Division. In considering the Appeal, the DOE noted that the withheld information outlined the comments of one of the attendees at the meeting. The DOE found that those comments reflected the attendee's personal observations and recommendations, rather than final agency policy. The DOE concluded that the information was predecisional and deliberative, and properly withheld pursuant to Exemption 5. Accordingly, the Appeal was denied.

Government Accountability Project, 3/23/89, KFA-0267

The Government Accountability Project (GAP) filed an Appeal from the denial of a Request for Information which it had submitted under the Freedom of Information Act (FOIA). GAP originally requested "all agency records filed pursuant to 49 CFR § 171.16 referring directly or indirectly to any reportable incidents occurring during the transportation of radioactive waste near or through the City of New York to or from Brookhaven National Laboratory (BNL) in 1987." In addition to searching Brookhaven DOE files, Brookhaven DOE

instructed BNL, a DOE contractor, to search its files for any responsive documents. Neither DOE nor BNL found responsive documents because no "reportable incidents" occurred in 1987. The Office of Hearings and Appeals denied GAP's Appeal, determining that the DOE had followed procedures which were reasonably calculated to uncover materials sought by GAP.

Request for Exception

Guam Energy Office, 3/24/89, KEE–0167

The Guam Energy Office (GEO) filed an Application for Exception from the provisions of 10 CFR Parts 450 and 455. In particular, GEO requested that it be exempted from the requirement that to be eligible for grants under the DOE's Institutional Conservation Program (ICP), a building must be heated or cooled by mechanical means. In considering GEO's Application, the DOE found that many of Guam's school and hospital buildings, which together represent a majority of its ICP-related structures, were ineligible to receive ICP grants because they were cooled by the trade winds rather than by mechanical means. The DOE concluded that the exclusion of such a large proportion of Guam's ICP-related buildings from participation in the ICP program frustrated the goals of the National Energy Conservation Policy Act and therefore imposed a gross inequity upon Guam. Accordingly, the Application for Exception was granted.

Implementation of Special Refund Procedures

Getty Oil Co., 3/21/89, KEF–0124

The DOE issued a Decision and Order implementing procedures for the distribution of $199.6 million, plus accrued interest, in crude oil overcharge funds obtained from Getty Oil Company. The DOE determined that the funds be distributed in accordance with the January 18, 1989 Order of the United States District Court for the District of Delaware, as well as the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Accordingly, 80 percent of the Getty crude oil overcharge funds was divided equally between the states and federal government. Twenty percent of the funds were reserved for direct restitution to injured parties submitting claims to the Office of Hearings and Appeals under 10 CFR Part 205, Subpart V. The specific information to be included in the applications for refund and the standards by which Subpart V crude oil refund claims will be evaluated are set forth in the Decision. All applications must be submitted by October 31, 1989.

Interlocutory Order

Economic Regulatory Administration (Kern Oil & Refining Co., 3/22/89, KRZ–0525, KRZ–0526

The Economic Regulatory Administration (ERA) filed Motions to dismiss Russell B. Newton and Donald M. LeDoux as parties to the enforcement proceeding involving Kern Oil & Refining Company, and to reduce the potential liability of Larry D. Delpit. The Motion to dismiss LeDoux and to limit Delpit's liability was based upon a change in ERA policy concerning personal liability. Under the new policy, the ERA stated that it will not seek to hold non-owners personally liable and that it will limit the potential liability of owners to an amount proportional to their ownership interest in the firm. The DOE granted this Motion, finding it to be reasonable and within the scope of the ERA's discretion. Accordingly, LeDoux was dismissed as a party to the Kern proceeding and Delpit's potential liability under the tortious conduct theory was limited to 25 percent of any Kern overcharges, an amount equivalent to his ownership share in the firm.

Newton, the principle owner of Kern, had been joined only under the trust fund and unjust enrichment thories of personal liability. In its Motion to dismiss him as a party to the Kern proceeding, the ERA argued that these theories are inapplicable under the circumstances of the present case. Although the DOE found that reasonable arguments could be made that Newton should be required to disgorge the benefits he received as a result of Kern's alleged violations under the trust fund doctrine and general equitable principles based upon his unjust enrichment, it nevertheless granted the ERA's Motion to dismiss Newton as a party, without prejudice. In this regard, the DOE noted that before personal liability may be imposed under these theories, recovery must first be sought from the corporation. Since that had not yet been done in the present case, the potential cause of action against Newton on these theories had not yet accrued.

Refund Applications

Aminoil U.S.A., Inc./Wilhelm Enterprises, Inc., 3/24/89, RR139–9

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Wilhelm Enterprises, Inc. (Wilhelm) in the Aminoil U.S.A., Inc. special refund proceeding. Wilhelm's initial Application for Refund was limited to $5,000 in principal because the firm had failed to supply information required for a showing of economic injury. The Motion for Reconsideration requested that the firm be allowed to submit such information at the present time. The Motion presented no new facts or evidence and, therefore, the DOE concluded that the Motion should be denied.

Apache Corporation et al., 3/20/89, RF272–31687et al., RD272–31687 et al.

The DOE granted a refund to four applicants that purchased petroleum products during the period August 19, 1973 through January 27, 1981. A group of thirty states and two territories of the United States (the States) filed a consolidated pleading objecting to and commenting on the applications. The only evidence submitted by the States was an affidavit by an economist stating that virtually evey industry was able to pass through some costs to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicants should receive a refund. In addition, the States filed a Motion for Discovery which was denied.

Atlantic Richfield Co./Anson Motors, Inc., 3/20/89, RF304–1090, RF304–7419

The DOE issued a Decision and Order concerning two Applications for Refund filed by different parties on behalf of Anson Motors, Inc. (AMI). One applicant, Mr. Anson Hall, is the previous owner who owned the firm during the consent order period. The other applicant, Mr. Gerald M. Vachon, purchased the firm in 1984, and is the present owner. Each party claimed $122, the full volumetric refund amount. The DOE determined that as a corporation, AMI is an "individual" with its own independent identity. Hence, AMI is the "individual" that was injured by purchasing ARCO products, and is the entity entitled to claim a refund. As the holder of AMI's stock, Vachon is the appropriate party to represent AMI in this proceeding. The DOE concluded that Vachon should receive a refund totalling $157, representing $122 in principal and $35 in accrued interest.

Atlantic Richfield Co./Fuller L.P. Gas Service Hardin County Butane Gas Co. Seaman Butane Co., 3/21/89, RF304–2291 et al.

The DOE issued a Decision and Order concerning eleven Applications for Refund filed in the Atlantic Richfield

Company (ARCO) special refund proceeding. The Applications were filed by partners on behalf of three commonly owned businesses. The claimants were reseller/retailers and documented the volume of their ARCO purchases. Rather than submit a detailed demonstration of injury in support of their full volumetric refund, the partners elected to limit their total refund to $5,000 in principal. Therefore, the applicants were presumed injured. The refunds granted in this Decison totalled $6,435 ($5,000 in principal and $1,435 in interest).

Atlantic Richfield Co./Good Housekeeping Gas Co., et al., 3/20/89, RF304–2433, et al.

The DOE issued a Decision and Order concerning four Applications for Refund in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end users or reseller/retailers that applied for small claims or mid-level presumtpion refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $34,371, representing $26,773 in principal and $7,598 in accrued interest.

Craig Blacktop and Paving Co., et al., 3/21/89, RF272–15763 et al.

The DOE issued a Decision and Order granting refunds in the Subpart V crude oil refund proceeding to 23 applicants based on their purchases of refined petroleum products during the period from August 19, 1973 through January 27, 1981. Each applicant was an end-user presumed to have been injured by the alleged overcharges. Each applicant submitted actual purchase volumes or reasonable estimates of its purchase volume. The sum of the refunds granted in this Decision is $36,270.

Donald Kraft, 3/21/89, RA272–7

On July 18, 1988, the DOE issued a Decision and order granting a refund of $8 to Donald Kraft, Case No. RF272–27093. *W.J. Thompson, et al.*, Case Nos. RF272–27000, *et al.* (July 18, 1988). The Appendix to this Decision and Order listed erroneous gallonage and refund figures for Donald Kraft. Accordingly, to remedy the situation, the DOE issued a Supplemental Order granting Donald Kraft an additional refund of $5.

Dorchester/Carl Losson, Inc. et al., 3/20/89, RF253–21 et al.

The DOE issued a Decision and Order granting seven Applications for Refund in the Dorchester Gas Corporation refund proceeding. Each of the seven applicants was a retailer or reseller of Dorchester petroleum products. Each applicant adequately established that it purchased the stated number of gallons of Dorchester product. Although each applicant's allocable share exceeds $5,000, each elected to limit its claim to the $5,000 threshold amount. Therefore, none of the applicants was required to provide a detailed demonstration of injury. The total of the refunds approved in this Decision is $50,925, including both interest and principal.

Earl Luttrell, et al., 3/22/89, RF272–27063, et al.

The DOE issued a Decision and Order granting 33 Applications for Refund from crude oil overcharge funds based on purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicants were found to be end-users that purchased a total of 101,904,195 gallons of covered product. The total amount of the refund granted in this Decision was $20,378.

F. Bar Cattle Co., et al., 3/20/89, RF272–10575, et al.

The DOE issued a Decision and Order granting refunds to six purchasers of refined petroleum products in the Subpart V Crude Oil proceeding. Each applicant was an end-user of the purchased products, and therefore was not required to show injury. However, each application contained some purchase figures that were given in terms other than gallons. Where it was possible to do so, the DOE converted these terms into gallons, and granted a refund to each applicant based on the appropriate gallonage. The total amount of refunds approved in this Decision was $3,798.

Fairfield Board of Education, et al., 3/21/89, RF272–31745, et al.

The DOEoe issued a Decision and Order granting refunds from crude oil overcharge funds to nine applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant is a public entity and used petroleum products for a variety of purposes including heating and transportation, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is $8,975.

Getty Oil Co./Metro Oil Products, 3/22/89, RF265–1621, RF265–1622.

Metro Oil Products filed Applications for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with Getty Oil Company. Metro documented the volume of motor gasoline and middle distillates which it purchased indirectly from Getty through Gay Johnson, Inc., a Getty jobber. The DOE granted Metro a refund, which was calculated based upon the procedures outlined in *Pioneer Corp./E.I. du Nemours & Co.*, 14 DOE ¶ 85,190 (1986), and totaled $8,726, representing $4,232 in principal and $4,494 in accrued interest.

Getty Oil Co./Skel-Ark Inc., Midstate Truck Plaza, 3/20/89, RF265–2044, RF265–2045, RF265–2327, RF265–2328.

The DOE issued a Decision and Order concerning four Applications for Refund with regard to purchases of motor gasoline and middle distillates covered by a Consent Order that the DOE entered into with Getty Oil Company. This Decision involved two applicants who applied for a refund based on the same indirect purchases of Getty products, Skel-Ark Inc. (Skel) and Midstate Truck Plaza (Midstate). Since Skel purchased all the stock of Midstate on February 27, 1976, the DOE held that Skel was the injured "individual" and, therefore, the applications filed on behalf of Skel should be granted. The applications on behalf of Midstate were dismissed. Skel documented the volumes of motor gasoline and middle distillates which it purchased through Brownie's Oil Company, a Getty jobber. The Skel refund, which was calculated based upon the procedures outlined in *Pioneer Corp./ E.I. du Pont de Nemours & Co.*, 14 DOE ¶ 85,190 (1986), totaled $10,308, representing $5,000 in principal and $5,308 in accrued interest.

Gulf Oil Corp./Agway Inc., 3/20/89, RF300–5603.

The DOE issued a Decision and Order concerning an Application for Refund filed by Agway Petroleum Corporation, an agricultural cooperative that resold Gulf products to its members in the Gulf Oil Corporation special refund proceeding. In accordance with the requirements of the Gulf proceeding, Agway certified that it will pass through the amount of any refund received to its customers. The refund granted in this Decision, which includes both principal and interest, is $54,421.

Gulf Oil Corporation/Don's Servicenter, et al., 3/21/89, RF300–1, et al.

The DOE issued a Decision and Order concerning 47 Applications for Refund submitted in the Gulf Oil Corporation

special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $99,659.

Gulf Oil Corporation/Greater Egg Harbor Regional High School District, et al., 3/20/89, RF300–7756, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $23,596.

Gulf Oil Corporation/Hesse Oil Co., et al., 3/21/89, RF300–629, et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $48,398.

Gulf Oil Corporation/Holmes Oil Company, Inc., L.W. Newman District, Inc., 3/20/89, RF300–5228, RF300–5301

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $3,143.

Gulf Oil Corporation/Jacksonville Electric Authority Consolidated City of Jacksonville, 3/20/89, RF300–680, RF300–10706

The DOE issued a Decision and Order concerning Applications for Refund filed by the Jacksonville Electric Authority (JEA), a regulated public utility, and the Consolidated City of Jacksonville (Jacksonville) in the Gulf Oil Corporation special refund proceeding. This Decision modified a refund of $168,100 previously granted to Jacksonville under the end-user presumption of injury in *Gulf Oil Corp./Livingston Gas and Electric Co.*, 18 DOE ¶ 85,655 (1989). Jacksonville's previous claim included gallons that were purchased for and consumed by JEA. By agreement of the parties, the DOE reduced Jacksonville's claim by the amount of gallons attributable to JEA's use and awarded JEA the refund on that amount under the end-user presumption of injury. Accordingly, JEA was granted a refund of $160,255 and Jacksonville's refund was reduced to $7,845. JEA certified that it would notify the body responsible for setting its rates and that it would pass through the amount of the refunds to its customers. The sum of the refunds granted, which includes both principal and interest, is $168,100.

Gulf Oil Corporation/Louis C. Keller, et al., 3/21/89, RF300–7833, et al.

The DOE issued a Decision and Order concerning 16 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $32,559.

Gulf Oil Corporation/Ryder Truck Lines, et al., 3/20/89, RF300–1855, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $182,485.

Gulf Oil Corporation/Thomas Andrade, et al., 3/20/89, RF300–7603, et al.

The DOE issued a Decision and Order concerning 31 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $77,006.

Lee's Air Service et al., 3/21/89, RF272–31456 et al.

The DOE issued a Decision and Order denying five Applications for Refund filed in the Subpart V crude oil refund proceeding. Each applicant was a reseller or retailer of petroleum products during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to crude oil overcharges, each applicant was ineligible for a crude oil refund.

Leo H. Williams, et al., 3/22/89, RC272–28, et al.

The DOE determined that seven claimants had received duplicate refunds in the Subpart V crude oil refund proceedings. Each applicant submitted two refund applications to the Office of Hearings and Appeals and received a refund for both applications. Accordingly, the DOE issued a Supplemental Order rescinding the second refund granted to each applicant.

Miles Lumber Company, Inc., et al., 3/22/89, RF272–14884, et al.

The DOE issued a Decision and Order concerning Applicants for Refund filed by 13 claimants in the crude oil special refund proceeding. The 13 applicants, who were resellers of petroleum products, failed to demonstrate that they were injured by alleged crude oil overcharges. Accordingly, all 13 applicants were denied.

Murphy Oil Corp./Consumers Oil Co., 3/20/89, RF309–941

The DOE issued a Supplemental Order rescinding the refund granted to Consumers Oil Co., Case No. RF309–280, in the Murphy Oil Corporation special refund proceeding. *See Murphy Oil Corp./Southwest Georgia Oil Co.*, 18 DOE ¶ 85,632 (1989). Consumers' application had been filed by Arne Moore, who owned Consumers during the consent order period. It had come to the attention of the DOE that the rightful recipient of Consumers' refund of $5,720 may not be Mr. Moore, but Intercity Oil Co., Inc., to which Mr. Moore sold all outstanding stock of Consumers in 1980. Accordingly, the DOE rescinded the refund pending an analysis of the sale of Consumers.

Russell Greenley, et al., 3/22/89, RC272–21, et al.

The DOE determined that seven claimants had received duplicate refunds in the Subpart V crude oil refund proceedings. Each applicant submitted two refund applications to the Office of Hearings and Appeals and received a refund for both applications. Accordingly, the DOE issued a Supplemental Order rescinding the second refund granted to each applicant.

Westfield River Paper Co., 3/22/89, RF272–12994

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Westfield River Paper Co. based on its purchases of No. 6 fuel oil during the period August 19, 1973 through January 27, 1981. The firm obtained its purchase volume from its records. The firm was an end-user of No. 6 fuel oil, and was therefore presumed injured. The firm was granted a refund of $10,010.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders.

Name	Case No.	Date	No. of applicant	Total refund
MLD & Son Ind. *et al.*	RF272-49000	3/20/89	149	$4,543
Ralph Finster *et al.*	RF272-49801	3/20/89	159	$3,397
Ronald Fossell *et al.*	RF272-49400	3/20/89	164	$3,694
Thomas L. Miller *et al.*	RF272-49601	3/20/89	148	$4,049

Dismissal

The following submissions were dismissed:

Name and Case No.

Airport Getty; RF265-2775
Alvin Roberson, Jr.; RF300-7904
Anderson Brother's Getty; RF265-2778
Bergeron's Getty; RF265-2773
Bruce Robinson Yandville Gulf; RF300-7709
Charlotte St. Gulf Inc.; RF300-6620
Damingo Service Center; RF300-8545
Davis Brothers Farms, Inc.; RF272-50603
Don's Imported Car Repair; RF300-9838
Ed's Midtown Standard; RF272-72415
Eddie B. Truck Stop; RF272-72394
Fay Alexander; RF307-2021
Fen Val Getty; RF300-8534
Flying A Service Center; RF300-8512
Frank's Getty; RF300-2776
George Service; RF300-9688
Getty Oil; RF300-8502
Getty Service Station; RF265-2779
Glenmoore Getty Service Center; RF300-9909
Grondias Auto Service; RF300-9955
Hampson Service Station; RF300-7642
J J Repair; RF300-9840
J&S Exxon Service; RF307-8501
Joe's Exxon; RF307-5848
Key Matic Fuel; RF300-8501
Lambertville Gulf; RF300-10487
Lee's Service Station; RF300-9916
Lou Anne Service; RF300-8546
Lube A Rama Getty; RF300-8461
Lyons Automotive; RF300-9951
Meadowbrook Getty; RF265-2777
North Avenue Getty; RF265-2780
Oak Court Exxon; RF307-2077
Oak Court Exxon and Wrecker; RF307-2094
Protho Junction Exxon; RF307-2023
Raben Service Center, Inc.; RF307-7990
Ramer Quick Stop; RF300-7326
Ramsey Equipment Co.; RF300-7675
Rese City Gulf Station; RF300-7736
Rogers; RF300-9928
Russ Getty, Inc.; RF265-2774
Ryder System, Inc.; RF300-8576
Sacramento Regional Transit District; RF272-25340
Sikorski Service; RF300-9902
St. Luke's Hospital; RF272-61137
Stan Auto Service, Inc.; RF300-9956
Stanley Getty; RF300-9906
State Aviation, Administration; RF272-63627
Tom's Gulf; RF300-9273
2124 Union; RF307-2064
6 55 Truck Stop; RF300-9935

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 12, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-12101 Filed 5-18-89; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of April 17 Through April 21, 1989

During the week of April 17 through April 21, 1989 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Union of Concerned Scientists, 4/20/89, HFA-0204

The Union of Concerned Scientists filed an Appeal from a denial by the Director, Classification and Technical Information Division, Albuquerque Operations Office of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE Office of Safeguards and Security, in consultation with the Nuclear Regulatory Commission (NRC), found that portions of the report "Preliminary Safeguards Concepts for Typical Light Water Reactors," initially withheld under exemption 1, should be released to the public. With respect to those portions of the report that remained protected by exemption 1, the DOE determined that the NRC would be designated the denying authority.

Implementation of Special Refund Procedures

Hood Goldsberry, KEF-0118, Meeker and Co. KEF-0121, Calumet Industries, Inc., KEF-0122, Christmann and Welborn, 4/19/89, KEF-0123

The DOE issued a Decision and Order implementing procedures for the distribution of $8.5 million (plus accrued interest) in crude oil overcharge funds obtained from four firms pursuant to court approved settlements, adjudications or DOE consent orders. The DOE determined that the funds should be distributed in accordance with the Department's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Accordingly, 80 percent of the money in these cases was divided equally between the states and federal government. Twenty percent of the funds was reserved for direct restitution to injured parties submitting claims to the OHA under 10 CFR Part 205, Subpart V. The specific information to be included in applications for refund are set forth in the Decision. All applications must be submitted by October 31, 1989.

Refund Applications

Atlantic Richfield Co. Collins Heating Service, et al., 4/19/88, RF304-1444, et al.

The DOE issued a Decision and Order concerning 82 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end users, each applicant is presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totaling $193,188, representing $149,987 in principal and $43,201 in interest.

Atlantic Richfield Co., Don and Bill's Arco, et al., 4/17/88, RF304-2, et al.

The DOE issued a Decision and Order concerning 72 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end users, each applicant is presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totaling $215,281, representing $166,905 in principal and $48,376 in interest.

Atlantic Richfield Co./Ron's Arco Service 66, et al., 4/17/88, RF304–126, et al.

The DOE issued a Decision and Order concerning 5 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end users, each applicant is presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totaling $8,493, representing $6,585 in principal and $1,908 in interest.

Beacon Oil Co./San Lucas Truck Stop, 4/17/89, RF238–46

The DOE issued a Decision and Order concerning an Application for Refund filed by San Lucas Truck Stop in the Beacon Oil Company special refund proceeding. The applicant submitted information which allowed the DOE to reconstruct cost banks which showed that the firm had not absorbed any increased product cost during the Consent Order period. Under the circumstances, the DOE found that the firm had not been injured by any of Beacon's alleged overcharges and concluded that the application should be denied.

Board of Education, NYC, 4/20/89, RF272–75417

The DOE issued a Decision granting the Board of Education of the City of New York (Education) a Subpart V crude oil refund. In a Proposed Decision and Order issued October 20, 1988, the OHA tentatively determined that Education was ineligible for a Subpart V refund because it was an affiliate of the New York City Departments of Sanitation (Sanitation) and Environmental Protection (DEP). Both Sanitation and DEP waived their rights and their affiliates' rights to a crude oil Subpart V refund by participating in the Stripper Well agreement, as claimants in the Refiners' Escrow. However, Education demonstrated that it is not an affiliate of either Sanitation or DEP but is an independent municipal corporation. Accordingly, the OHA granted Education a refund based on the end-user presumption of injury. The total gallonage approved in this Decision is 22,375,000 gallons. The total refund approved is $17,900.

City of Los Angeles, 4/18/89, RF272–2728

The DOE issued a Decision denying the City of Los Angeles (Los Angeles) a Subpart V crude oil refund. The OHA determined that Los Angeles was ineligible for a Subpart V refund because it waived its rights to a crude oil Subpart V refund by participating in the Stripper Well agreement, as a claimant in the Refiners' Escrow. Accordingly, Los Angeles' Application for Refund was denied.

Dorchester Oil Corp./Home Petroleum Corp., 4/21/89, RF253–11

The DOE issued a Decision and Order concerning an Application for Refund submitted by Home Petroleum Corporation (Home) in the Dorchester Oil Corporation special refund proceeding. Home established that it purchased $34,774,497 of butane and propane from Dorchester. Home requested a refund of over $5,000. Therefore, Home was required to submit a detailed demonstration of injury. Home demonstrated that it maintained cost banks during the relevant time period greater than its allocable share of the Dorchester funds. Home submitted a competitive disadvantage analysis, which indicated that for propane the prices Dorchester charged Home were generally below market and therefore, no refund was granted to Home for its purchase of propane. For butane, in half of the months of the consent order period, Dorchester's prices to Home exceeded average national market prices though national market prices were determined by extrapolation. Accordingly, Home was granted a refund based on the above-market gallons of butane multiplied by the volumetric. Accordingly, Home was granted a total of $165,154, representing $112,605 in principal and $52,549 in interest accrued on that principal.

Gulf Oil Corp./Alexander's Gulf Service Station, et al., 4/17/89, RF300–309, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by retailers who made their Gulf purchases indirectly. In none of the 11 cases was there a demonstration that the supplier of the applicant, the direct purchaser, did not pass on the alleged overcharges to the applicants. Accordingly, we presumed that the indirect purchasers submitting claims under the small claims presumption were overcharged by the full volumetric amount. The total refund granted to the applicants in this Decision is $14,483.

Gulf Oil Corp./Brown Transport Corp., 4/19/89, RF300–10781

On November 9, 1988, the DOE issued a Decision and Order granting a refund of $1,112 to Brown Transport Corporation, Case No. RF300–5126. *Gulf Oil Corp./Brown Transport Corp., et al.*, 18 DOE ¶ 85,194 (1988). The DOE determined that this was a duplicate of the refund granted to Brown Transport Corporation, Case No. RF300–0544 on December 15, 1988. *Gulf Oil Corp./Associated Co-Op, Inc., et al.*, 18 DOE ¶ 85,383 (1988). Accordingly, the DOE issued a Supplemental Order rescinding the refund granted to Brown Transport Corporation in *Gulf Oil Corp./Brown Transport Corp.*

Gulf Oil Corp./C&J Commercial Driveaway, Inc., et al., 4/21/89, RF300–526 et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, is $83,102.

Gulf Oil Corp./Daniels-McKnown Oil Co., 4/17/89, RF300–5226

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Daniels-McKown Oil Company, a consignee and reseller of Gulf refined products. Daniels-McKown Oil Company's allocable share as a reseller is less than $5,000, and its total principal refund is less than $5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The total refund granted to Daniels-McKown Oil Company in this Decision and Order is $6,090.

Gulf Oil Corp./Demollis Gulf Service Center, 4/21/89, RF300–10782

The OHA issued a Supplemental Order concerning an Application for Refund filed by Louis Demolli, owner of Demollis Gulf Service Center (Demollis Gulf) in the Gulf Oil Corporation special refund proceeding. On March 21, 1989, the DOE issued a Decision granting Demollis Gulf (Case No. RF300–5) a refund of $956. *Gulf Oil Corporation/Don's Servicenter, et al.*, 18 DOE ¶_____ (Case Nos. RF300–1, *et al.*). However, Louis Demolli had already received a refund of $1,079 in the Gulf proceeding (Louis Demolli; Case No. RF300–985) for essentially the same gallons as he applied for in Case No. RF300–5. *Gulf Oil Corporation/Thomas & Howard Co., et al.*, 18 DOE ¶ 85,347 (1988). Accordingly, the OHA rescinded the latter duplicate refund granted to Demollis Gulf in Don's Servicenter, *et al.*

Gulf Oil Corp./Don F. Campbell, 4/20/89, RF300-7809

The DOE issued a Decision and Order concerning an Application for Refund submitted by Don F. Campbell (Campbell) in the Gulf Oil Corporation special refund proceeding. Campbell was both a reseller and a consignee of Gulf refined petroleum products during the consent order period. Campbell was granted a refund unilizing the 40 percent presumption of injury as a reseller and the 10 percent presumption of injury as a consignee. The greatest refund amount that Campbell was eligible to receive was $5,000. The refund granted in this Decision is $6,563.

Gulf Oil Corp./Greenville County, South Carolina, 4/17/89, RF300-10763

The DOE issued a Supplemental Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The DOE granted a refund of $4,501 to Greenville County, South Carolina (Greenville County) on an Application filed by its attorney (Case No. RF300-4732) in *Gulf Oil Corporation/Farrell Lines Incorporated, et al.*, 18 DOE ¶ 85,494 (1989). However, Greenville County also received a refund of $4,526 on a duplicate Application that it filed directly (Case No. RF300-6078) in *Gulf Oil Corporation/William J. Smith, et al.*, 18 DOE ¶ 85,586 (1989). The Supplemental Order rescinded the refund granted on the Application filed by its attorney (Case No. RF300-4732).

Gulf Oil Corp./Joseph Torres, 4/20/89, RF300-10784

The DOE issued a Supplemental Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The DOE granted a refund of $2,548 for 3,069,566 gallons of Gulf product to Torres Gulf on an Application filed for it by Energy Refunds, Inc. (ERI) (Case No. RF300-294) in *Gulf Oil Corporation/Jimmy's Gulf Service, et al.*, 18 DOE ¶ — (Case Nos. RF300-219, *et al.*) (March 28, 1989). However, the owner, Joseph Torres, previously received a refund of $2,142 for 2,644,223 gallons on a duplicate Application that he filed directly (Case No. RF300-4017) in *Gulf Oil Corporation/Central Motor Express, et al.*, 18 DOE ¶ 85,264 (1988). The Supplemental Order modified the refund granted on the Application filed by ERI (Case No. RF300-294) and awarded the applicant $353 on the 425,343 gallons not previously claimed.

Gulf Oil Corp./Mid-Valley Pipeline Co., 4/20/89, RF300-7765

The DOE issued a Decision and Order concerning an Application for Refund submitted by Mid-Valley Pipeline Company (Mid-Valley) in the Gulf Oil Corporation special refund proceeding. The total refund granted in this Decision is $1,629.

Gulf Oil Corp./Robinson Kenney, et al., 4/21/89, RF300-6518, et al.

The DOE issued a Decision and Order concerning 8 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using the consignee presumption of injury. The sum of the refunds granted in this Decision is $3,514.

Gulf Oil Corporation Virdell Oil Co., 4/18/89, RF300-4560

The DOE issued a Desicion and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Virdell Oil Co., a reseller and consignee of covered Gulf products. The applicant elected to base its refund on the small claims and 10 percent presumptions of injury. The applicant's allocable share as a reseller is less than $5,000, and its total principal refund for both reseller and consignee gallons is less than $5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The applicant received a total refund of $2,515, which includes both principal and interest.

Harold W. Marks, 4/21/89, RA272-8

On January 21, 1989, the DOE issued a Decision and Order granting a refund of $5 to Harold W. Marks (Marks) (RF272-45972). *Raymond Witmer, et al.*, 18 DOE ¶ _____ (Case Nos. RF272-45804, *et al.* (January 12, 1989). The Appendix to this Decision & Order listed erroneous gallonage and refund figures for Marks. Accordingly, to remedy the situation, the DOE issued a Supplemental Order granting Marks an additional refund of $185.

Mobil Oil Corp. Vanguard Petroleum Corp., 4/20/89, RF225-9188

The DOE issued a Decision and Order denying an Application for Refund filed by Vanguard Petroleum Corp. in the Mobil Oil Corp. special refund proceeding. *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985) (*Mobil*). Vanguard, a petroleum reseller, claimed a refund based on 38,140,258 gallons of product which it obtained from Mobil through exchange transactions. The information which Vanguard submitted failed to demonstrate tht the firm was injured by any alleged overcharges in its exchanges with Mobil. In addition, because Vanguard obtained product through exchanges, rather than cash transactions, it could not rely on the injury presumptions regularly used in Subpart V refund proceedings. Accordingly, the firm's Application was denied.

Murphy Oil Corp./RCH, Inc. et al., 4/18/89, RF309-848 et al.

The DOE issued a Decision and Order granting an Application for Refund filed by 36 applicants, all purchasers of refined petroleum products, in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corporation*, 17 DOE ¶85,782 (1988), each applicant was found to be eligible for a refund based on the volume of product it purschased from Murphy. The total refund approved in this Decision was $46,770, representing $40,313 in principal plus $6,457 in accured interest.

Murphy Oil Corp./Tolbert's Transport, et al., 4/18/89, RF309-800 et al.

The DOE issued a Decision and Order granting an Application for Refund filed by 33 applicants, all purchasers of refined petroleum products, in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corporation*, 17 DOE ¶85,782 (1988), each applicant was found to be eligible for a refund based on the volume of product it purschased from Murphy. The total refund approved in this Decision was $59,042, representing $50,890 in principal plus $8,152 in accrued interest.

Murphy Oil Corp./Williams Spur Station et al., 4/17/89, RF309-285 et al.

The DOE issued a Decision and Order granting seven Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applications purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $14,853 ($12,802 in principal plus $2,051 in interest).

Standard Oil Co. (Indiana)/Caribou Four Corners, 4/18/89, RR21-5

The DOE considered Caribou Four Corners' Motion for Reconsideration of a denial of its Application for Refund in the Standard Oil Company (Indiana) (Amoco) refund proceeding. The original refund request was based on Caribou's purchases of crude oil from Amoco. The DOE found that Caribou had not

provided any information showing the prices that Amoco should have charged it for the crude oil. The DOE therefore determined that Caribou had not established that any overcharge occurred in connection with the Amoco sales of crude oil to Caribou. Accordingly, the Motion for Reconsideration was denied.

The True Companies/Tesoro Petroleum Corp. et al., 4/18/89, RF195–14 et al.

The DOE issued a Decision and Order concerning five Applications for Refund from the True Companies escrow fund. Each applicant elected to use purchase volumes set forth in the Appendix to the Decision and Order implementing the True refund procedures and no refund claim exceeded the $5,000 small claims refund presumption. Accordingly, all five claims were approved. The total refund granted was $31,062, including $20,728 in principal and $10,334 in interest.

Welch Foods, Inc., 4/21/89, RF272–23922

The DOE issued a Decision and Order granting the Subpart V crude oil refund application of Welch Foods, Inc., a cooperative. OHA determined that Welch had not resold the 1,384,000 gallons of petroleum products it purchased between August 1973 and December 1981 to either its members or its non-members, and that it was therefore an end-user. Accordingly, Welch was granted a refund of $1,107 based on these purchases.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Order:

Name	Case no.	Date	No. of applicants	Total refund
Grainger County, TN, et al.	RF272–22235.	4/21/89	37	$59,453

DISMISSALS

Name	Case no.
ARCO Car Wash	RF304–4956
Bernard J. Casper	RF272–53707
Cameron Bros. Construction Co	RF272–75195
Charles J. George, Inc	RF272–75143
Charles R. Mohler	RF272–68622
Chattanooga Gas Co	RF272–65813
Chesnut Farms	RF272–14769
Clarence Stelling	RF272–72161
Constant Oil Co	RF310–206
Dell Transportation Corp	RF272–75053
Dodge County Highway Dept	RF272–54270
Fort Stockton I.S.D	RF272–75384
Francis F. Wilcox	RF272–72276

DISMISSALS—Continued

Name	Case no.
Harry Goers	RF272–50241
Irrigation Specialties	RF272–75383
Jack Bell	RF272–71217
JBG Farms	RF272–50666
Knorr's ARCO Mini-Shop/Gregory Knorr.	RF304–3682
Leon L. Oberman	RF272–69872
Lone Oak I.S.D	RF272–55647
Myron Dreviow	RF272–73670
Palmer's ARCO	RF304–3725
	RF304–4405
Peter S. Jazdzewski	RF272–53315
Robinson Oil Co	RF313–69
Sal's ARCO	RF304–6910
Sparkeys Shop	RF272–67135
Water Valley I.S.D	RF272–75332
Wayne Peterson	RF272–71541

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 12, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89–12102 Filed 5–18–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3573–6]

Environmental Impact Statements, Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed May 8, 1989 Through May 12, 1989 Pursuant to 40 CFR 1506.9

EIS No. 890119, Draft, FHW, PA, I–81 Connector/LR–1067, Section A01 Construction, US 11/Harrisburg Exchange to I–81 on the North, Funding and 404 Permit, Cumberland County, PA, Due: July 7, 1989, Contact Manual A. Marks (717) 782–2222.

EIS No. 890120, Final, FHW, CA, CA–118 Through Saticoy Realignment and Widening, CA–126/Santa Paula Freeway to CA–232/Vineyard Avenue, Including the Santa Clare River Bridge Replacement, Funding and 404 Permit, Ventura County, CA, Due: June 19, 1989, Contact Glen Clinton (916) 551–1310.

EIS No. 890121, Draft, BOP, PR, Guaynebo Metropolitan Detention Center, Construction and Operation, Implementation, PR, Due: July 3, 1989, Contact: William J. Patrick (202) 272–6535.

EIS No. 890122, Draft FHW, MO, South Riverfront Expressway Construction, Front Street Interchange on I–435 to US 24, Funding, Cities of Independence, Kansas City and Sugar Creek, Jackson County, MO. Due: July 7, 1989, Contact: James Mullen (314) 636–7104.

Amended Notices

EIS No. 880430, Draft, IBR, CA, American River Service Area Water Contracting Program, Water Supply Project for Agricultural Municipal and Industrial Uses, Long-Term Contracting, San Joaquin, Sacramento and Placer Counties, CA, Due: May 26, 1989, Contact Bill Payne (916) 978–5488. Published FR 1–6–89—Review period extended.

EIS No. 880431, Draft, IBR, CA, Sacramento River Water Service Area Contracting Program, Water Supply Project for Municipal and Industrial, Wildlife Rufuge and Agricultural Uses, Long-Term Contracting, Shasta, Tehama, Yolo Solano, Colusa and Solano Counties, CA, Due: May 26, 1989, Contact: Bill Payne (916) 978–5488. Published FR 01–06–89—Review period extended.

EIS No. 880432, Draft, IBR, CA, Delta Export Service Area Water Contracting Program, Water Supply Project for Agricultural, Municipal and Industrial and Wildlife Refuge Uses, Long-Term Contracting, Fresno, Kern, Kings, Madera, Merced, San Joaquin, Tulare, Monterey, San Benito, Santa Clara and Santa Cruz Cos. CA, Due: May 26, 1989, Contact: Bill Payne (916) 978–5488. Published FR 01–06–89—Review period extended.

EIS No. 890065, Draft, EPA, DC, Blue Plains Wastewater Treatment Plant, Sludge Management Plan, Construction Grant, DC, Due: June 23, 1989, Contact: Jayne Dohm (215) 597–7828. Published FR 04–07–89—Review period extended.

Dated: May 16, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–12086 Filed 5–18–89; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3573-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 1, 1989 through May 5, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 14, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-L61181-OR, Rating EC2, Mount Hood Meadows Ski Area Additional Development and Expansion, Master Plan Approval, Special Use Permits and 404 Permit, Mount Hood National Forest, Hood River County, OR. **SUMMARY:** EPA is concerned about the common use of "high" and "highest" to describe potential impacts assigned to all resource categories for all development alternatives. EPA also believes there is a need for additional resource categories and additional information analysis for air quality, water quality, and wetlands.

Final EISs

ERP No. F-AFS-L65110-00, Siskiyou National Forest, Land and Resource Management Plan, Implementation, curry, Coos and Josephine Counties, OR and Del Norte County, CA. **SUMMARY:** EPA believes this document to be responsive to our major environmental concerns on the draft. EPA is particularly encouraged by the revised format for implementing the monitoring plan, especially with regard to water resources, fish habitat, and forest programs and budgets.

ERP No. F-FHW-E40711-NC, US 220 Construction, Steed to Ulah Connection, Funding, Randolph and Montgomery Counties, NC. **SUMMARY:** EPA believes that as project designs are finalized that further efforts to reduce noise, non-point source and wetland impacts should be investigated and implemented where practicable.

ERP No. F-SCS-E34029-KY, South Fork of Little River Watershed Multiple Purpose Floodwater Protection and Municipal and Industrial Water Supply Project, Funding and Implementation, Christian and Todd Counties, KY. **SUMMARY:** EPA has no significant objection to the proposed action.

Dated: May 16, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-12087 Filed 5-18-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00099A; FRL-3573-4]

Biotechnology Science Advisory Committee; Subcommittee on Biotechnology Health; Cancellation of Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Cancellation of Open Meeting.

SUMMARY: EPA is issuing this notice to announce the cancellation of the June 2, 1989, meeting of the Biotechnology Science Advisory Committee; Subcommittee on Biotechnology Health.

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 Street SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Notice was published in the **Federal Register** of May 12, 1989 (54 FR 20639), announcing a meeting of the Biotechnology Science Advisory; Committee Subcommittee on Biotechnology Health to be held on June 2, 1989. This notice announces the cancellation of that meeting.

Dated: May 12, 1989

Victor J. Kimm,

Acting Assistant Administrator, for Pesticides and Toxic Substances.

[FR Doc. 89-12045 Filed 5-18-89; 8:45 am]

BILLING CODE 6560-50-M

[PF-517; FRL-3573-3]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (H-7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attention: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
Dennis Edwards (PM 12).	Rm. 202, CM #2, 703-557-2386.	1921 Jefferson Davis Highway, Arlington, VA 22202.
George LaRocca (PM 15).	Rm. 204, CM #2, 703-557-2400.	Do.
Phil Hutton (PM 17).	Rm. 207, CM #2, 703-557-2690.	Do.
Lois Rossi (PM 21).	Rm. 227, CM #2, 703-557-1900.	Do.
Lawrence Schnaubelt (PM 23).	Rm. 237, CM #2, 703-557-1830.	Do.
Robert Taylor (PM 25).	Rm. 245, CM #2, 703-557-1800.	Do.
Jeffrey Kempter (PM 32).	Rm. 711, CM #2, 703-557-3964.	Do.
Kerry Leifer (PM 45).	Rm. 716, CM #2, 703-557-4354.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows, proposing the establishment and or amendment of tolerances or regulations

for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 9F3717.* Biocontrol Ltd., 719 Second St., Suite 12, Davis, CA 95616, proposes to amend 40 CFR 180.1073 by establishing a regulation to exempt from the requirement of a tolerance Isomate M pheromone dispensers when used on apples, quince, almonds, apricots, plums, and macadamia nuts. (PM 17)

2. *PP 9F3727.* Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06525, proposes to amend 40 CFR 180.301 by establishing a regulation to permit the residues of carboxin [5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide in or on onions (dry bulb) at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 21)

3. *PP 9F3728.* American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, proposes to amend 40 CFR 180 by establishing a regulation to permit the residues of imazethapyr (AC 263,499) (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid) as its ammonium salt in or on the legume vegetables group at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 25)

4. *PP 9F3730.* Nor Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, proposes to amend 40 CFR 180.287 by establishing a regulation to permit the residues of the insecticide amitraz (N'-[2,4-dimethylphenyl]-N-[[(2,4-dimethylphenyl)imino] methyl]]]-N-methylmethanimidamide) and its metabolites N-(2,4-dimethylphenyl)-N-methyl formamide and N-(2,4-dimethylphenyl)-N-methylmethanimidamide in or on cottonseed at 1.0 ppm, eggs, poultry fat, and poultry meat at 0.1 ppm and poultry meat byproduct at 0.05 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 12)

5. *PP 9F3733.* ICI Americas, Inc., Agricultural Products, Concorde Pike & New Murphy Rd., Wilmington, DE 29897, proposes to amend 40 CFR 180.411 by establishing a regulation to permit the residues of the herbicide [R]-2-[4[[(5-trifluoromethyl)-2-pyridinyl] oxy]phenoxy] propanoic acid (fluazifop), both free and conjugated, and of [R]-butyl-2[4[[(5-trifluoromethyl)-2-pyridinyl] oxy] phenoxy] propanoate (fluazifop-butyl), all expressed as fluazifop, in or on sugarcane at 0.05 ppm. The proposed analytical method for determining residues is high-pressure liquid chromatography. (PM 23)

6. *PP 9F3743.* Valent U.S.A. Corp., 1333 North California Blvd., Suite 600, Walnut Creek, CA 94596-8025, proposes to amend 40 CFR 180 by establishing a regulation to permit the residues of clethodim (E)-2-[1-[([3-chloro-2-propenyl)-oxy)imino) propyl]-5-[2-(ethylthio) propyl]-3-hyrdoxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety in or on soybeans at 10 ppm; cottonseed at 5 ppm; meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.2 ppm; milk at 0.05 ppm; and egges at 0.5 ppm. The proposed anayltical method for determining residues is gas chromatography. (PM 23)

7. *PP 9F3744.* Mycogen Corp., 5451 Oberlin Drive, San Diego, CA 92121, proposes to amended 40 CFR Part 180 by establishing a regulation for an exemption from the requirement of a tolerance for residues of encapsulated delta endotoxin of *Bacillus thuringiensis* var. *san diego* resulting from application as an insecticide on potato, tomato, and eggplant according the label directions. (PM 17)

8. *PP 9F3747.* Mobay Corp., Agricultural Chemicals Divisions, P.O. Box 9413, Kansas City, Mo 64120–0013, proposes to amend 40 CFR 180.436 by establishing a regulation to permit the residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on fresh hops at 4.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 15)

9. *PP 9F3750.* BASF Corp., Chemicals Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 40 CFR 180.380 by establishing a regulation to permit the residues of fungicide-3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4 oxazolidinedione and its metabolities containing the 3,5-dichloro-aniline moiety in milk at 0.2 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.05; meat of cattle, goats, hogs, horses, and sheep at 0.3 ppm; meat byproduct of cattle, goats, hogs, horses, and sheep at 1.2 ppm; eggs at 0.05 ppm; poultry fat and poultry meat at 0.05 ppm; and poultry meat byproduct at 0.06 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 21)

10. *PP 9F3751.* Suncoast Chemical Distributors, c/o Pharmoco Laboratories, Inc., 3520 South St., Titusville, FL 32780, proposes to amend 40 CFR 180.1032 by establishing an exemption from the requirement of a tolerance for formaldehyde in or on tomatoes. The proposed analytical method for determining residue is high-performance liquid chromatography. (PM 21)

11. *FAP 9H5578.* Snowden Enterprises, Inc., P.O. Box 751, Fresno, CA 93712, proposes to amend 40 CFR 186.1013 by establishing an exemption from the requirement of a tolerance for residues of sulfur dioxide in or on graph pomace and related products. (PM 32)

12. *FAP 9H5580.* Mobay Corp., Agricultural Chemicals Division, P.O. Box 4913, Kansas City, MO 64120–0013, proposes to amend 40 CFR 185.1250 be establishing a regulation to permit the residues of the insecticide cyfluthrin (cyano (4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in or on dried hops at 20.0 ppm. (PM 15)

13. *FAP 9H5581.* Rutgers, The State University of New Jersey, Office of IR–4, Cook College, New Brunswick, NJ 08903, proposes to amend 40 CFR 185.600 by establishing a regulation to permit the residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-N-methyl-carbamate), and its carbamate metabolites(2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-N-methylcarbamate), and its phenolic metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzo-furanol, 2,3-dihydro-2,2-dimethyl-3, 7-benzofuranol, and 2, 3-dihydro-2, 2-dimethyl-3, 7-benzofurandiol) in or on mint oil at 2 ppm. (PM 45)

14. *FAP 9H5582.* Maag Agrochemicals, Inc., P.O. Box 6430, Vero Beach, FL 32961–6430, proposes to amend 40 CFR Part 185 by establishing a regulation to permit the residues of fenoxycarb (ethyl[2-[p-phenoxyphenoxy]ethyl)carbamate) in or on food commodities exposed to the chemical during treatment of food-handling establishments, which include food service, manufacturng, and processing facilities.

(a) Direct application shall be limited to spot and/or crack and crevice treatments in food-handling establishments where food and food products are held (stored), processed, prepared, or served. Spray concentrations shall be limited to a maximum of 0.187-percent active ingredient. For crack and crevice treatments, equipment capable of delivering a pin-stream of spray directly into cracks and crevices shall be used.

For spot treatments, a coarse, low-pressure spray shall be sued to avoid contamination of food and food-contact surfaces.

(b) To ensure safe use of the insect growth regulator, its label and labeling shall conform to that registered by the Environmental Protection Agency, and it shall be used in accordance with such label and labeling. (PM 17)

Authority: 7 U.S.C. 136a.

Dated: May 9, 1989.

Herbert S. Harrison,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-12044 Filed 5-18-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Fair Housing and Nondiscrimination in Lending; Agency Information Collection Activities Under Office of Management and Budget Review

Date: May 12, 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 extension, without revision, an information collection request, "Fair Housing and Nondiscrimination in Lending," to the Office of Management and Budget for approval in accordance with Paperwork Reduction Act (44 U.S.C. Chapter 35).

This information collection will provide the Bank Board the necessary information to monitor FSLIC-insured institutions compliance with the Equal Credit Opportunity, Fair Housing and Community Reinvestment Acts. We estimate it will take approximately 18.65 hours per respondent to complete the information collection.

DATES: Comments on the information collection request are welcome and should be received on or before June 5, 1989.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Service Division, Office of Secretariat, Federal Home Loan Bank Board, 1700 G. Street NW., Washington, DC 20552, Phone: 202-416-2751.

FOR FURTHER INFORMATION CONTACT: Gerauld C. Kluckman, Director of Compliance Programs, Office of Regulatory Activities, (202) 785-5442, 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. 89-12023 Filed 5-18-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200247

Title: Jacksonville Port Authority Terminal Agreement

Paties: Jacksonville Port Authority (JPA), A/S Ivaran Rederi (Rederi)

Synopsis: The Agreement provides that in consideration of Rederi's guarantee of ten vessel calls at the Port of Jacksonville within six months of the effective date of this Agreement, JPA will give discounts from the tariff for wharfage and receiving and delivery of containers and chassis. The Agreement's term is for six months.

Agreement No.: 224-200233-002

Title:: Philadelphia Port Corporation Terminal Agreement

Parties: Philadelphia Port Corporation; Holt Cargo Systems, Inc.

Synopsis: The Agreement amends Exhibit B, terminal rules, of the basic terminal lease and operating agreement of the Packer Avenue Marine Terminal. The Agreement deletes the provision which requires 30 days notice to terminal users in order to make changes in the schedule of terminal rates.

Agreement No.: 224-200233-001

Title: Philadelphia Port Corporation Terminal Agreement

Parties: Philadelphia Port Corporation; Holt Cargo Systems, Inc.

Synopsis: The Agreement amends the basic terminal lease and operating agreement for the Packer Avenue Marine Terminal. The Agreement establishes a new combination stevedoring and terminal through-put container rate open to any ocean common carrier utilizing a fully wheeled operation and providing an annual volume of at least 10,000 full containers. The rate will expire September 30, 1989.

By Order of the Federal Maritime Commission.

Dated: May 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-12076 Filed 5-18-89; 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.

Agreement No.: 212-010320-018

Title: Brazil/U.S. Gulf Ports Agreement

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional, American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I., and Transportacion Maritima Mexicana S.A.

Synopsis: The proposed modification would delete certain provisions which have expired by their own terms and would extend the special carrying adjustment for Wheels for Automobiles until November 1, 1989.

By Order of the Federal Maritime Commission.

Dated: May 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-12077 Filed 5-18-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Statement on the Home Mortgage Disclosure Act

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Final action.

SUMMARY: The purpose of the Statement on the Home Mortgage Disclosure Act (HMDA) is to encourage financial institutions covered by the HMDA to file timely and accurate HMDA reports. The Statement notes the concern of the FFIEC and the five agencies represented on the FFIEC with the number of reporting errors in the individual HMDA reports filed by individual financial institutions and with the number of reports filed after the March 31 due date. The Statement lists the actions taken recently by the FFIEC and the agencies to assist financial institutions in improving their performance and asks for any suggestions financial institutions might have as to additional steps that could be taken to improve the timeliness and accuracy of the reports.

ADDRESS: Federal Financial Institutions Examination Council, 1776 G Street, NW., Suite 701, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street, NW., Suite 701, Washington, DC 20006.

DATE: Statement was approved by the FFIEC on May 11, 1989.

SUPPLEMENTARY INFORMATION: This Statement on the Home Mortgage Disclosure Act (HMDA) was developed by the FFIEC because of concern over the timely availability to the public of the HMDA data.

Covered financial institutions are required to prepare their individual HMDA reports by March 31 of each year for their mortgage lending for the previous calendar year. Such reports are filed with the appropriate Federal financial institution regulatory agency and are used by the FFIEC to prepare reports showing aggregate mortgage lending in each Metropolitan Statistical Area (MSA) in the United States. Under the HMDA, the FFIEC is required to make these aggregate reports on home mortgage lending for a particular year available to the public by December 31 of the following year. Such reports are used by individuals, community organizations, and government agencies to evaluate the performance of financial institutions in making mortgage credit available in the communities in which they have offices. The reports, for example, can be used to compare lending among different neighborhoods within a particular metropolitan area and to compare the lending patterns of individual financial institutions with the total for all institutions. The data in the reports also show aggregate lending patterns for various categories of census tracts grouped according to income categories, racial characteristics, geographic location, and age of housing stock.

The FFIEC makes these aggregate lending reports, as well as the reports for each financial institution, available to the public through a nationwide system of data depositories that the FFIEC has established.

Reports of their mortgage lending by individual financial institutions—commercial banks, savings institutions, credit unions, and certain mortgage banking companies—provide the raw data that are used by the FFIEC to produce the HMDA aggregation reports. Consequently, the timeliness and accuracy of the reports produced by the FFIEC depend greatly on the timeliness and quality of the individual HMDA reports submitted by the financial institutions.

Statement on the Home Mortgage Disclosure Act

The text of the Statement follows:

The Federal Financial Institutions Examination Council's (FFIEC) member agencies are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration, and the Office of the Comptroller of the Currency. The FFIEC is issuing this statement to encourage institutions covered by the Home Mortgage Disclosure Act (HMDA or the Act) to adhere to the specific requirements of the Act and Regulation C (12 CFR Part 203). The agencies are concerned about the number of reporting errors in the HMDA report and the large number of reports received from financial institutions after the March 31 due date.

The FFIEC is required by the Act to make HMDA aggregation tables for the previous year available to the public no later than December 31 of each year. Although the FFIEC has met this goal, there is strong Congressional and public interest in making the aggregation tables available earlier in the year. In the conference report that accompanies the February 1988 amendments to HMDA, the Congress called upon the FFIEC and the agencies to take measures to expedite the availability of the HMDA data. Issuance of this Statement is one of those measures.

Covered institutions are encouraged to develop policies and procedures that will ensure full compliance with the HMDA and Regulation C. It is the agencies' policy to provide institutions with guidance to assist them in providing timely and accurate reports. HMDA compliance will be emphasized in examinations. The agencies will also consider what supervisory and enforcement actions may be appropriate to ensure compliance.

The FFIEC and the agencies have already taken steps to assist covered institutions in improving their performance:

- The FFIEC has issued a manual, entitled "A Guide to HMDA Reporting—Getting it Right", which provides an executive overview for management and an instructional section for persons preparing the HMDA report forms. The guide is being made available by the agencies.
- The FFIEC has developed a reformatted census tract list that identifies the specific census tract numbers for each metropolitan statistical area with codes to indicate small and untraded counties that must be reported by county name. In addition, the list identifies counties with dual census tracts that must be reported by both county name and census tract number. These lists will help prevent reporting errors and are available upon request from each agency.
- A videotape entitled "How to Prepare a HMDA Statement" is being prepared to assist in familiarizing compliance personnel with the requirements of HMDA and Regulation C. This instructive video will be made available upon request from the agencies at a nominal cost. It will assist institutions in preparing calendar year 1989 statements that are due March 31, 1990.

Timely and accurate HMDA reporting is not only required by law, it is essential if the aggregate HMDA data is to be made available to the public at the earliest possible date. A cooperative effort among the agencies and the covered institutions is imperative.

Suggestions on how to help ensure accurate and timely submission of the HMDA disclosure form are invited and encouraged. Suggestions or comments should be forwarded to: Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street, NW., Suite 701, Washington, DC 20006.

May 16, 1989.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions, Examination Council.

[FR Doc. 89-12098 Filed 5-18-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

First Clay County Banc Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 5, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Clay County Bank Corporation,* Clay, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Clay County Bank, Clay, West Virginia.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *ARSEBECO, Inc.,* Falls City, Nebraska; to acquire 90 percent of the voting shares of State Bank of Stella, Stella, Nebraska.

2. *BOC Banshares, Inc.*, Chouteau, Oklahoma; to acquire 95.9 percent of the voting shares of Bank of Commerce, Chouteau, Oklahoma.

3. *F.N.B.A. Holding Co., Inc.*, North Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Arvada, Arvada, Colorado.

Board of Governors of the Federal Reserve System, May 12, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12032 Filed 5-18-89; 8:45 am]

BILLING CODE 6210-01-M

Tuscaloosa Bancshares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank inidicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Govenors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible advere effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 9, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Tuscaloosa Bancshares, Inc.,* Denham Springs, Louisiana; to engage *de novo* in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of Louisiana.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Banterra Corp.,* Eldorado, Illinois; to engage *de novo* through its subsidiary Baneterra Insurance Services, Inc., Eldorado, Illinois, in general insurance agency activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. Applicant will engage through Company in insurance agency activities in 5 illinois towns, each town having a population of less than 5,000 and each town having a lending office of one of Applicants's subsidiary banks. These towns are Christopher, Norris City, Ridgway, Vienna, And McLeansboro.

Board of Governors of the Federal Reserve System, May 12, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12031 Filed 5-18-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (40 FR 22859, May 27, 1985, as amended most recently at 53 FR 44126, November 1, 1988), is amended to reflect the following changes within the National Institutes of Health: (1) Abolish the Division of Communicative and Neurosensory Disorders (HNQ4) within the National Institute of Neurological and Communicative Disorders and Stroke (HNQ); (2) establish the national Institute on Deafness and Other Communication Disorders (HN3), with an Office of the Director (HN31), a Division of Intramural Research (HN32), a Division of Extramural Activities (HN33), and a Division of Communication Sciences and Disorders (HN34); (3) retitle the National Institute of Neurological and Communicative Disorders and Stroke (NINCDS) (HNQ) to the National Institute of Neurological Disorders and Stroke (NINDS) (HNQ)

and modify its functional statement; and (4) modify the functional statement for the Division of Intramural Research (HNQ2) of the NINDS.

These changes will implement the requirement of the National Deafness and Communication Disorders Act (Pub. L. 100–553) to establish the National Institute on Deafness and Other Communication Disorders. Because the research on deafness and other communication disorders is currently under the direction of the NINCDS, it is appropriate that this organization be modified in order to comply with the intent of Congress.

Section HN–B, Organization and Functions, is amended as follows:

(1) After the statement for the *National Institute of Child Health and Human Development (HNT)*, insert the following:

National Institute on Deafness and Other Communication Disorders (HN3). Conducts, fosters, and supports research and research training on the causes, prevention, diagnosis, and treatment of deafness and other communication disorders through: (1) Intramural, collaborative, and field research in its own laboratories, branches, and clinics, and through contracts; (2) research grants to scientific institutions and to individuals; (3) individual and institutional research training awards to increase trained professional research personnel in the fields of deafness and other communication disorders; and (4) cooperation with various agencies in collecting and disseminating eductational and informational material related to deafness and other communcation disorders.

Office of the Director (HN31). (1) Plans and directs the Institute's programs; (2) formulates policies and provides program planning and appraisal services for the Institute; and (3) provides administrative and scientific and health reporting services.

Division of Intramural Research (HN32). (1) Plans and conducts the Institute's intramural basic and clinical research programs which encompass deafness and communication disorders; (2) insures optimal utilization of available resources in the attainment of Institute objectives; (3) evaluates research efforts and establishes division priorities; (4) integrates new research activities into the program structure; (5) collaborates with other Institute and NIH programs; and (6) maintains an awareness of national research efforts and provides advice to the Institute Director and staff regarding intramural research in scientific areas of interest to the Institute.

Division of Extramural Activities (HN33). (1) Advises the Director on the Institute's extramural programs; (2) represents the Institute Director as required in extramural relationships; (3) coordinates program planning in the extramural areas; (4) coordinates recommendations for funding levels for the categorical programs; and (5) provides technical support activities, including technical merit review of grant applications and proposals, and grants management services.

Division of Communication Sciences and Disorders (HN34). (1) Plans and directs a program of grant and contract support for research and research training on communicative disorders to insure maximum utilization of available resources in attainment of Institute objectives; (2) assesses need for research and research training in program areas; (3) determines program priorities and recommends funding levels for programs to be supported by grants; (4) determines priorities and funding levels for research to be supported by contracts; (5) collaborates with intramural programs in the Institute and HIH-wide and maintains an awareness of national research efforts in program areas; (6) prepares reports and analyses to assist Institute staff and advisory groups in carrying out their responsibilities; and (7) consults with voluntary health organizations and with professional associations in identifying research need and developing programs to meet them.

(2) Under the heading *National Institute of Neurological and Communicative Disorders and Stroke (HNQ)*, make the following changes:

(a) Delete the title and statement for the *Division of Communicative and Neurosensory Disorders (HNQ4)* in their entirety.

(b) Delete the title and statement for the *National Institute of Neurological and Communicative Disorders and Stroke (HNQ)*, and the statement for the *Division of Intramural Research (HNQ2)* in their entirety and substitute the following:

National Institute of Neurological Disorders and stroke (HNQ). Conducts, fosters, and supports research and research training on the causes, prevention, diagnosis, and treatment of neurological and muscle disorders through: (1) Intramural, collaborative, and field research in its own laboratories, branches, and clinics, and through contracts; (2) research grants to scientific institutions and to individuals; (3) individual and institutional research training awards to increase trained professional research personnel in the neurological fields; and (4) cooperation with various agencies in collecting and disseminating educational and informational material related to neurological disorders.

Division of Intramural Reserach (HNQ2). (1) Plans and conducts the Institute's intramural basic and clinical research program in neurological disorders and stroke; (2) insures optimal utilization of available resources in the attainment of Institute objectives; (3) evaluates research efforts and establishes division priorities; (4) integrates new research activities into the program structure; (5) collaborates with other Institute and NIH programs; and (6) maintains an awareness of national research efforts and provides advice to the Institute Director and staff regarding intramural research in scientific areas of interest to the Institute.

Date: May 8, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 89–11996 Filed 5–18–89; 8:45 am]

BILLING CODE 4140-01-M

Centers for Disease Control

National Institute for Occupational Safety and Health; Meeting on the Expansion of Direct Reading Instrumentation Capabilities

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Division of Physical Sciences and Engineering (DPSE).

Date: June 6, 1989

Time: 9:00 a.m.–2:00 p.m.

Place: Conference Room C NIOSH–Alice Hamilton Laboratory, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by space available.

Purpose: To conduct an open meeting for the review of a project titled: "Expansion of Direct Reading Instrumentation Capabilities." This project will study a number of portable gas chromatographic instruments to determine their applicability and capability for on-site environmental monitoring. Tests performed on the various instruments selected for evaluation will measure their ability to separate and detect sample componenents, and also will measure the repeatability of retention times and detector response. The information obtained will enable the prediction of suitable instruments for a specific set of field conditions in future use, provide a reference method or background data

against which to evaluate any such future use, and establish a general baseline against which to measure further development in this field.

Additional information may be obtained from: G. Edward Burroughs, Project Officer, Division of Physical Sciences and Engineering, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, R–8, Cincinnati, Ohio 45226. Phone: FTS: 513/841–4266 Commerial: 684–4266

Dated: May 15, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 89–12033 Filed 5–18–89; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Orthopedic and Rehabilitation Devices Panel

Date, time, and place. June 6, 1989, 8 a.m., Conference Rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 10:30 a.m.; closed presentation of data, 10:30 a.m. to 11 a.m.; open committee discussion, 11:20 a.m. to 12:50 p.m.; closed presentation of data, 12:50 p.m. to 1:20 p.m.; open committee discussion, 2:20 p.m. to 3:50 p.m.; closed presentation of data, 3:50 p.m. to 4:20 p.m.; Marie A. Schroeder, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7156.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 31, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for a prosthetic acetabular component, a diagnostic ultrasound device, and a hydroxyapatite bone void filler.

Closed presentation of data. The committee may discuss trade secret or confidential commercial information regarding the PMA's for the prosthetic acetabular component, the diagnostic ultrasound device, and the hydroxyapatite bone void filler. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel

Date, time and place. June 22 and 23, 1989, 9 a.m., Rm. 800, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, June 22, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open public hearing, June 23, 1989, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7320.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 21, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 22, 1989, the committee will discuss general issues relating to approvals of PMA's for intraocular lenses (IOL's) and other class III surgical or diagnostic devices, and may discuss specific PMA's for these devices. If discussion of all pertinent IOL's or other class III surgical or diagnostic device issues are not completed, discussion will be continued the following day. On June 23, 1989, the committee will discuss PMA's for contact lenses and other devices and requirements for PMA approval.

Closed committee deliberations. On June 22 and 23, 1989, the committee may discuss trade secret or confidential commercial information relevant to PMA's for IOL's, surgical or diagnostic devices, contact lenses, or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(a)(4)).

Gastroenterology-Urology Devices Panel

Date, time, and place. June 23, 1989, 9 a.m., Rm. T–416–418, Twinbrook Bldg. No. 4, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Ruth W. Hubbard, Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Discussion of effectiveness criteria for extracorporeal shockwave lithotripsy of gallstones between 9 a.m. and 10 a.m. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 1, 1989, and submit a brief statement of the general nature of the evidence or argument they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss PMA's for extracorporeal shock wave lithotripters.

Closed committee deliberations. Trade secret and/or confidential commercial information will be presented to the committee regarding the lithotripters. Portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. June 30, 1989, 8:30 a.m., Rm. 503A–529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 16, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss PMA's for pulse generator systems and possibly a prosthetic heart valve.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each pubic advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contract person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximatley 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational

or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 12, 1989.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 89–11993 Filed 5–18–89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

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. 52, No. 9, dated Wednesday, January 14, 1987, pg. 1530; Vol. 52, No. 43, dated Thursday, March 5, 1987, pg. 6882; Vol. 50, No. 87, dated Monday. May 6, 1985, pg 19094; Vol. 46, No. 223, pp. 56927–56929, dated Thursday, November 19, 1981, Vol. 48, No. 196, pp. 46446–46447, dated Wednesday, October 12, 1983, Vol. 52, No. 178, pp. 34849–34850, dated Thursday, September 15, 1987, Vol. 53, No. 139, pp. 27401–27402, dated Wednesday, July 20, 1988, Vol. 53, No. 195, pp. 39525–39526, dated Friday, October 7, 1988) is amended to reflect a realignment of functions in the Office of the Associate Administrator for Operations. The responsibility for processing certain beneficiary overpayment cases is being transferred from the Bureau of Program Operations, Office of Financial Operations, Division of Overpayment Prevention to the HCFA regional offices' Division of Medicare (for Regions I, III, VII and VIII) and the Division of Program Operations (for Regions II, IV–VI, IX and X).

The specific changes to Part F. are described below:

• Section FP.20.A., Bureau of Program Operations (FPA), is deleted in its entirely and replaced by an updated functional statement to read as follows:

A. Bureau of Program Operations (FPA)

Provides direction and technical guidance for the nationwide administration of HCFA's health care financing programs. Develops, negotiates, executes, and manages contracts with Medicare contractors. Manages the Medicare financial management system and national budgets for Medicare contractors. Establishes national policies and procedures for the procurement of claims processing and related services from the private sector. Defines the relative responsibilities of all parties in health care financing operations and designs the operational systems which link these parties. Directs the establishment of standards of performance for contractors. Compiles operational and performance data for recurring and special reports to reflect status and trends in program operations effectiveness. Prepares recommendations regarding terminations, awards, penalties, nonrenewals, or other appropriate contract actions. Establishes national policy and procedures for the recovery of overpayments. Directs the processing of Part A and Part B beneficiary appeals and issues instructions and guidance for resolving beneficiary overpayments.

• Section FP.20.A.4., Office of Financial Operations (FPA7), is deleted in its entirely and replaced by an updated functional statement to read as follows:

4. Office of Financial Operations (FPA7)

Establishes the policies and procedures by which contractors and regional offices prepare and submit periodic budget estimates. In consultation with other HCFA and BPO components, develops and negotiates the national budget for Medicare contractors, including workload and funds estimates. Controls and manages the Medicare cash flow and related banking activities. Reviews periodic contractor expenditure reports to evaluate budget execution and determines the allowability of costs. Prepares analyses of Medicare expenditure trends and patterns. Reviews regional office and contractor performance in determining the correct amount of provider, physician, and supplier overpayments, and assists contractors in negotiations related to the acceptability of techniques for determining the amount of an overpayment and the methods of recovery. Prepares cases when the compromises are not appropriate and overpayments are collectable and assists the HCFA Claims Collection Officer in preparing such cases for disposition. Prepares manual instructions concerning the procedures for the recovery of provider cost report, physician, and supplier overpayments. Designs, implements, and maintains a Medicare overpayment tracking system. Establishes procedures and guidelines to target the audits of Medicare contractors. Assures that audit funds are utilized to provide a high rate of return in program savings. Directs special audit projects. Compiles operational and performance data for recurring and special reports to reflect the status and trends in program operations effectiveness. Directs and coordinates the bureau's Automated Data Processing activities.

• Section FP.20.A.4.d, Division of Overpayment Prevention (FPA77), is deleted in its entirety and replaced by an updated functional statement to read as follows:

4. Division of Overpayment Prevention (FPA77)

Analyzes the capabilities of the Medicare contractors to ascertain the most efficient application of funds available for collecting overpayments from HCFA's providers, suppliers, and beneficiaries. Prepares manual instructions for regional offices and contractors on the proper determination and recovery of overpayments of Medicare funds. Analyzes, controls, and monitors outstanding overpayments to assure that contractors are timely in identifying and collecting overpayments. Advises and assists regional offices and contractors in negotiations with providers, physicians, and suppliers relating to the acceptability of particular techniques of determining the amount of overpayments, the responsibility for repayment, and the method of recovery. Provides assistance in determining when recovery action is pursued, maintains the control system relating to the acceptability of particular techniques of determining the amount of overpayments, the responsibility for repayment, and the method of recovery. In addition, maintains the control system relating to the statute of limitations for filing suit and assists the HCFA Claims Collection Officer in processing uncollectable overpayment cases. Issues instructions and guidance for the collection of beneficiary overpayments and develops policies, procedures, and guidelines for use by regional offices and contractors. Processes uncollectable overpayment cases which exceed $20,000. Develops regular and special management information reports relating to all

aspects of the beneficiary overpayment reporting and collection activity. Monitors the performance of the regional offices in their evaluation and control of contractor performance.

• Section FP.20D.4., Division of Program Operations (FPD (II, IV–VI, IX and X) D) is deleted in its entirety and replaced by an updated functional statement to read as follows:

4. Division of Program Operations (FPD (II, IV–VI, IX 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 deficiencies are noted, ensures that corrective action is taken as 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 submission 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.

• Section FP.20.D.6., Division of Medicare (FPD (K, III, VII and VIII) F) is deleted in its entirety and replaced by an updated functional statement to read as follows:

6. Division of Medicare (FPD (I, III, VII and VIII) 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 contractor 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 institutional reimbursement policies. Relates appropriately to elements of SSA, providing consultation on Medicare program matters and any other activity necessary to achieve program 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, the 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.

Date: May 5, 1989.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 89–11995 Filed 5–18–89; 8:45 am]

BILLING CODE 4120–01–M

Office of Human Development Services, Statement of Organization, Functions, and Delegations of Authority; Administration on Aging

This Notice amends Part D of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Office of Human Development Services as follows: Chapter D, Office of Human Development Services as last amended at 53 FR 25544 on July 7, 1988; and Chapter DG Administration on Aging, as last amended, at 52 FR 3056 on January 30, 1987. Specifically this organizational change would make the following changes to the Administration on Aging functional statement: establish an Office of American Indians, Alaskan Natives and Native Hawaiians Programs (OAIANNHP) and retitle the Office of State and Tribal Programs as the Office of State and Community Programs.

The changes are as follows:

1. Chapter D.20 Functions, paragraph "E. Administration on Aging (AoA)," add the following statement:

Administers a program of grants to Indians, Alaskan Natives, and Native Americans, under Title VI of the Older Americans Act 45 (CFR 1328).

2. Chapter DG.10 Organization. Include the following:

a. Retitle the Office of State and Tribal Programs as the Office of State and Community Programs.

b. Add the Office of American Indians, Alaskan Natives and Native Hawaiians Programs.

3. Chapter DG.20 Functions, retitle the "Office of State and Tribal Programs," as the Office of State and Community Programs; and under this Office, delete all references to the Title VI Program.

4. Chapter DG.20 Functions add the following:

C. *Office of American Indians, Alaskan Natives and Native Hawaiians Programs.* (DG). Serves as the focal point within AoA for the operation and assessment of the programs authorized under Title VI of the Older Americans Act (OAA) (45 CFR Part 1328) and is responsible for program and policy direction to the ten Regional Offices of AoA in the execution of their Title VI responsibiliies, and interpretation of regulations and policy implementing Title VI of the OAA.

Evaluates the adequacy of outreach under Titles III and VI for older Native Americans and recommends to the Commissioner necessary action to improve service delivery, outreach, and coordination between services under Titles III and VI, and particular problems faced by older Indians and Native Hawaiians.

Provides in the Annual Report required by Section 207(a) of the OAA a description of the results of such evaluation and recommendations.

Serves as the effective and visible advocate on behalf of older Native Americans within the Department and with other departments and agencies of the Federal Government regarding all Federal policies affecting older Native Americans.

Coordinates activities among other Federal departments and agencies to assure a continuum of improved services through memoranda of agreements or through other appropriate means of coordination.

Adminsters and evaluates the grants provided under the OAA to Indian tribes, and public agencies and nonprofit private organizations serving Native Hawaiians. Recommends to the Commissioner policies and priorities with respect to the development and operation of programs and activities conducted under the Act relating to older Native Americans.

Collects and disseminates information related to problems experienced by older Native Americans. Develops the Native American input to AoA's Office of Program Development (OPD) for inclusion in AoA's research plan. This input places special emphasis on the gathering of statistics on the status of older Native Americans. Develops input for grantees under Title VI to the technical assistance and training programs managed by OPD. Develops input to the Office of Management and Policy on the budget for Native American activities.

Recommends to the Commissioner decisions on proposed contracting by Title VI grantees with profitmaking organizations to carry out provisions of the Act.

Chairs the Interagency Task Force on older Indians, which represents departments and agencies of the Federal government with an interest in the welfare of older Indians. The Task Force makes recommendations to the Commissioner, at six month intervals, to facilitate the coordination and improvement of services to older Indians. These recommendations are included in the Annual Report to Congress.

Recommends to the Commissioner, and supervises, a contract to study the availability and quality of services provided under the Act to older Indians. This one-time study includes: an analysis of the number of older Indians participating in programs under Titles III and VI as compared to the number of older Indians eligible to participate in such programs; a description of the way grants under Titles III and VI of the Act are made to Indian tribes and the way services are made available to older Indians; and a determination of what services are provided through Title VI to older Indians and how well AoA assures that supportive services to Indians under Title VI of the Act, with special consideration to information and referral, legal, transportation, and ombudsman services. Recomends to the Commissioner for approval and submission to Congress a report of the findings of the study, together with recommendations for legislation.

Date: May 12, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-12054 Filed 5-18-89; 8:45 am]

BILLING CODE 4110-60-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 5, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Community Cancer Care Evaluation—NEW—The study seeks to obtain information about the knowledge, attitudes and practices of community primary care physicians regarding state-of-the-art cancer prevention, detection, and treatment, clinical research and the NCI-sponsored Community Clinical Oncology Program (CCOP). The study will be done twice to measure change over time in a sample of primary care physicians in 20 CCOP communities and a national sample of physicians in order to determine the effectiveness of CCOP and to design future programs. Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees, small businesses or organizations, non-profit institutions; Number of Respondents: 2,000; Number of Responses per Respondent: 1.65; Average Burden per Response: .30 hours; Estimated Annual Burden: 996 hours.

2. Contents of a Request for Health Hazard Evaluation—42 CFR 85.3-1—0920-0102—This data collection is an application for Health Hazard Evaluation as described in 42 CFR 85.3-

1. Employers or authorized representatives of employers in general industry or mining may request an evaluation to determine whether any substances normally found in the place of employment have potential toxic effects. Respondents: Businesses or other for-profit; Number of Respondents: 500; Number of Responses per Respondent: 1; Average Burden per Response: .20 hours; Estimated Annual Burden: 100 hours.

3. September 1989 and 1990 Cardiovascular Disease Risk Factor Supplement to the Current Population Survey—NEW—The Cardiovascular Disease Risk Factor Supplement to the CPS will provide data for planning and evaluation of the National High Blood Pressure Education Program, National Cholesterol Education Program, and the NHLBI Smoking Education Program; it will collect data on the prevalence of cigarette smoking and the awareness and reported treatement of high blood cholesterol and hypertension; and detect changes in the awareness and treatment of these risk factors over one year. Respondents: Individuals or households; Number of Respondents: 57,500; Number of Responses per Respondent: 1.25; Average Burden per Response: .0165 hours; Estimated Annual Burden: 1,186 hours.

4. Development of Computerized Assisted Instructional (CAI) Modules on Cardiovascular Disease (CVD) Nutrition (Phase II). This project will develop and evaluate an interactive videodisc module as a teaching medium for cardiovascular nutrition. The target populations are medical students and physicians. This module will provide training for physicians in accurately assessing cardiovascular risk and advising their patients to make appropriate modification as a means of reducing disease risk. Respondents: Individuals or households; Number of Respondents; 120; Number of Responses per Respondent: 1; Average Burden per Response: 1 hour; Estimated Annual Burden: 120 hours.

5. Atherosclerosis Risk in Communities Study (ARIC)—0925–0281—A random sample of 16,000 persons, age 45–64, is being selected from four communities. They provide medical, social and demographic information and participate in repeat examinations to study the etiology of atherosclerosis and its clinical sequelae. Surveillance for coronary heart disease is being conducted in all adults in these communities. Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

	No. of respond-ents	No. of hours per response	No. of responses per respondent
Examin-ees	5,834	0.65425 hrs.	5.65410
Commu-nity Physi-cians	673	0.22734 hrs.	1.00000
Dece-dent's Next-of-Kin	673	0.16939 hrs.	1.00000

Estimated annual burden: 21,848 hours.

6. Case Control Study of Risk Factors for Listeriosis—NEW—This study will focus on classifying certain foods as well as behaviors as risk factors for developing Listeriosis Monocytogenes. Respondents will complete a questionnaire designed to determine food preparation habits. Results from this study will assist health professionals to develop educational programs designed to reduce morbidity from listeriosis. Respondents: Individuals or households; Number of Respondents: 630; Number of Responses per Respondent: 1; Average Burden per Response: .5 hours; Estimated Annual Burden: 315 hours.

7. Eligibility for IHS Services, 42 CFR Part 36—0917–0008—To apply for eligibility to receive Indian Health Service (IHS) direct and contract health services, a person must submit evidence of tribal relationship and residence within an IHS Health Service Delivery Area. A tribal governing body may request a change in IHS health service delivery areas supported by documentation specified in 42 CFR 36.15 (b)(1–5). Respondents: Individuals or households, State or local governments.

	No. of respond-ents	No. of hours per response	No. of re-sponses per respond-ent
Paternity acknowledge-ment	300	0.237	1
Tribal denial statement	11,955	0.083	1
Tribal request to change health service area boundaries	5	1.0	1
Request for IHS beneficiary ID card	129,000	0.25	1

Estimated annual burden . . . 33,322

8. 1989 National Health Interview Survey—0920–0214—The National Health Interview Survey (NHIS), an ongoing survey of the civilian noninstitutionalized population, monitors the Nation's health. The 1989 NHIS includes supplements on Dental Health, Diabetes, Digestive Disorders, Health Insurance, Mental Health, and Immunization. The purpose of this revision is to continue use of the AIDS knowledge and attitudes supplement through the last half of 1989. Respondents: Individuals or households; Number of Respondents: 48,500; Number of Responses per Respondent: 1; Average Burden per Response: 1.347 hours; Estimated Annual Burden: 65,331 hours.

9. Application and Related Forms for the Operation of the National Death Index—0920–0215—These forms are needed for the continued administration of the National Death Index, which provides health researchers with a central location for determining whether persons in their studies may have died and directs researchers to the appropriate State for more detailed death record data. Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, non-profit institutions; Number of Respondents: 120; Number of Responses per Respondent: 2.4; Average Burden per Response: .788 hours; Estimated Annual Burden: 227 hours.

OMB Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: May 12, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89–11934 Filed 5–18–89; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96–511, The Paperwork Reduction Act. The following clearance packages have been

submitted to OMB since the last list was published in the **Federal Register** on April 28, 1989.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Application For Benefits Under the Italy-U.S. International Social Security Agreement—0960–0445—The information collected on the form SSA–2528 is used by the Social Security Administration to determine if a resident of Italy is eligible for Social Security benefits under the Italy-U.S. Social Security Agreement. The respondents are residents of Italy who file for U.S. benefits with the Italian Social Security Agency.

Number of Respondents: 180
Frequency of Response: 1
Average Burden Per Response: 20 minutes
Estimated Annual Burden: 60 hours

2. Representative Payee Evaluation Report—0960–0069—The information collected on the form SSA–624 is used by the Social Security Administration to determine the continuing suitability of an individual's representative payee for Social Security benefits or Supplemental Security Income payments. The respondents are individuals who received an SSA–623 (Representative Payee Report) but failed to return it, or did not complete it properly.

Number of Respondents: 422,533
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 211,267 hours
OMB Desk Officer: Justin Kopca

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: May 5, 1989.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89–12047 Filed 5–18–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–09–4212–24; N–49077]

Airport Lease Application; Lyon County, NV

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), Leland B. Hill has applied for a public airport lease for the following land:

Beginning at the South ¼ corner of section 36, Township 20 North, Range 24 East, MDB&M, Lyon County, Nevada, thence S89°11'01" E a distance of 302.78 feet along the southern boundary of said section 36. Thence N22°41'32" W for 945.96 feet to the true point of beginning, thence S67°18'28" W for 100 feet to Corner No. 1.

From Corner No. 1, by metes and bounds,

N22°41'32" W for 4840 feet, to Corner No. 2;
S89°39'33" W for 200 feet, to Corner No. 3;
S22°41'32" E for 1190 feet, to Corner No. 4;
N67°18'28" E for 600 feet, to Corner No. 5;
S16°33'14" E for 400 feet, to Corner No. 6;
S67°18'28" W for 555 feet, to Corner No. 7;
S22°41'32" E for 3170 feet, to Corner No. 8;
S67°18'28" W for 100 feet, to the point of beginning.

The area as described contains approximately 27 acres.

Upon publication of this Notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land and mining laws, but not the mineral leasing laws, for a period of one year. If an airport lease is issued for this land within this one-year period the segregation will continue throughout the term of the lease.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, NV 89706.

Dated: May 10, 1989.

James W. Elliott,

District Manager.

[FR Doc. 89–12000 Filed 5–18–89; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–09–4212–11; N–10151]

Partial Classification Termination and Opening Order; Nevada

May 9, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates, in part, Recreation and Public Purposes (R&PP), classification N–10151 and opens the affected lands to the operation of the public land laws including location under the mining laws.

EFFECTIVE DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Ben Collins, District Manager, Las Vegas District Office, Bureau of Land Management, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646–8800.

SUPPLEMENTARY INFORMATION: In 1978, the following described land was classified as suitable for lease/purchase pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, et seq.), and was segregated from all other forms of appropriation under the public land laws and location under the mining laws.

Mount Diablo Meridian, Nevada

T. 22 S., R. 59 E.,
Sec. 7, NE¼SE¼SE¼NW¼.

The area described contains 2.5 acres in Clark County.

The lands have been included in an R&PP lease which has since expired. Recently the District Office received an expression of interest in the above-described parcel which cannot be authorized pursuant to the Recreation and Public Purposes Act.

At 10:00 a.m. on June 19, 1989, the lands described above will be open to all forms of appropriation under the public land laws, including location under the mining laws, subject to any valid existing rights and the requirements of applicable laws, rules, and regulations.

At 10:00 a.m. on June 19, 1989, the same land will also be open to the operation of the mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. All of the land remains open to the mineral leasing laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–12001 Filed 5–18–89; 8:45 am]

BILLING CODE 4310–HC–M

[WY–920–09–4111–15; WYW69483]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

May 12, 1989.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and

Regulations 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW69483 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW69483 effective December 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 89–12051 Filed 5–18–89; 8:45 am]

BILLING CODE 4310–22–M

[AZ–920–09–4212–13; A–23589]

Arizona; Exchange of Public and Private Lands in Mohave, Pinal and Yavapai Counties

May 11, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Exchange of Land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Julian Berry. The United States transferred 3,190.37 acres in Pinal County and Julian Berry conveyed 29,541.65 acres in Mohave and Yavapai Counties.

FOR FURTHER INFORMATION CONTACT: Angela Mogel, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241–5534.

SUPPLEMENTARY INFORMATION: Recently, the Bureau of Land Management transferred the following described land by Patent No. 02–89–0021, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian

T. 3 S., R. 7 E.,
- Sec. 4, E½SW¼SE¼;
- Sec. 5, SE¼SW¼;
- Sec. 8, NE¼NW¼, S½NW¼, W½SW¼;
- Sec. 14, SW¼SW¼;
- Sec. 17, NW¼NW¼;
- Sec. 18, SE¼SE¼;
- Sec. 20, S½SW¼;
- Sec. 22, NE¼, N½SE¼, E½W½SW¼SE¼, E½SW¼SE¼, SE¼SE¼;
- Sec. 23, N½, SW¼, NW¼SE¼;
- Sec. 24, W½NW¼, SE¼NW¼;
- Sec. 27, W½NW¼;
- Sec. 33, N½NE¼, NW¼NW¼, W½SW¼, SE¼SW¼;
- Sec. 34, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
- Sec. 35, all;
- Sec. 36, lots 7 to 12, incl., SW¼.

The area described comprises 3,190.37 acres in Pinal County.

In exchange the following described land was conveyed to the United States:

Gila and Salt River Meridian

Parcel I—Surface Only

T. 16 N., R. 10 W.,
- Sec. 3, lots 1 and 2, S½NE¼, SE¼;
- Sec. 10, NE¼;
- Sec. 11, NW¼.

T. 16½ N., R. 10 W.,
- Sec. 19, lots 3 to 6, incl., NE¼SW¼.

T. 17 N., R. 11 W.,
- Sec. 14, SW¼NE¼, W½, W¼SE¼, SE¼SE¼, S½NW¼NW¼NE¼, SW¼NW¼NE¼, W½NE¼SE¼.

Parcel II—Surface Only

T. 16 N., R. 10 W.,
- Sec. 31, lots 1 to 4, incl., E¼, E½W½.

T. 16 N., R. 11 W.,
- Sec. 5, lots 1 to 4, incl., S½N½, S½;
- Sec. 7, lots 1 to 4, incl., E½, E½W½;
- Sec. 15, all;
- Sec. 17, S½SW¼;
- Sec. 19, lots 1 to 4, incl., E½, E½W½;
- Sec. 21, S½NE¼;
- Sec. 22, NW¼NE¼, S½NE¼, W½, SE¼;
- Sec. 23, all;
- Sec. 26, all;
- Sec. 27, all;
- Sec. 33, all;
- Sec. 34, all;
- Sec. 35, all.

T. 16 N., R. 12 W.,
- Sec. 1, lots 1 to 4, incl., S½N½, S½;
- Sec. 3, lots 1 to 4, incl., S½N½, S½;
- Sec. 5, Portion SE of Bohner Canyon;
- Sec. 7, Portion SE of Bohner Canyon;
- Sec. 9, all;
- Sec. 11, all;
- Sec. 13, all;
- Sec. 15, all;
- Sec. 17, all;
- Sec. 27, S½;
- Sec. 33, NW¼;
- Sec. 35, all.

T. 16½ N., R. 10 W.,
- Sec. 19, lots 1 and 2, incl., SE¼SW¼, SE¼.

T. 16½ N., R. 11 W.,
- Sec. 19, lots 1 to 4, incl., N½SE¼;
- Sec. 20, lots 1 to 4, incl., S½;
- Sec. 21, lots 1 to 4, incl., S½;
- Sec. 28, all;
- Sec. 29, all;
- Sec. 31, lots 1 to 4, incl., E½, E½W½;
- Sec. 33, N½NW¼.

T. 16½ N., R. 12 W.,
- Sec. 21, lots 1 to 4, incl., S½;
- Sec. 23, lots 1 to 4, incl., S½;
- Sec. 25, S½;
- Sec. 27, all;
- Sec. 33, all;
- Sec. 35, all.

T. 17 N., R. 11 W.,
- Sec. 15, all;
- Sec. 17, all;
- Sec. 19, lots 1 to 3, incl., E½, E½NW¼, NE¼SW¼;
- Sec. 21, all;
- Sec. 29, all;
- Sec. 31, lots 1 to 4, incl., E½, E½W½;
- Sec. 33, all.

T. 17 N., R. 12 W.,
- Sec. 13, all;
- Sec. 23, all;
- Sec. 25, all;
- Sec. 35, all.

Parcel III—Surface and Minerals

T. 17 N., R. 10 W.,
- Sec. 32, W½, SE¼.

The area described comprises 29,541.65 acres in Mohave and Yavapai Counties.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

The surface of the land conveyed to the United States in this exchange will be administered by the Bureau of Land Management. The mineral estate in Parcel I of the reconveyed land was already in Federal ownership and has been and presently remains open to the operation of the mining and mineral leasing laws. The mineral estate in Parcel II of the reconveyed land remains out of Federal ownership.

Marsha L. Luke,

Chief, Branch of Lands Operations.

[FR Doc. 89–12006 Filed 5–18–89; 8:45 am]

BILLING CODE 4310–32–M

[CA–940–09–5410–10–ZBJF; CACA 20375 and CACA 24528]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Segregation.

SUMMARY: The private lands described in this notice are being considered for conveyance of the reserved mineral interests pursuant to Section 209 of the Federal Land Policy and Management Act of October 21, 1976.

FOR FURTHER INFORMATION CONTACT: Lavonia Silva, California State Office, Bureau of Land Management, 2800 Cottage Way, Room–2841, Sacramento, California 95825, (916) 978–4820.

Upon publication of this Notice of Segregation in the **Federal Register**, as provided in 43 CFR 2720, simultaneously at 10:00 a.m. on June 21, 1989, the segregative effect imposed by the Notice of Realty Action published in the **Federal Register**, October 1, 1987, Vol.

52, No. 190, page 36843 will be lifted for mineral conveyance application CACA 20375 and reinstated under application CACA 24528 for the following lands:

Mount Diablo Meridian

T. 3 S., R. 17 E.,
Sec. 19, Lot 15;
Sec. 20, SW¼SW¼;
Sec. 28, N½SW¼, NW¼SE¼, W½NE¼;
Sec. 29, Lots 1 thru 12, SE¼SW¼, SW¼SE¼.

Acres—639.09.
County—Mariposa.
Mineral Reservation—All Minerals.

Date: May 11, 1989.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-12007 Filed 5-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-010-09-4212-13; CA 23982]

Realty Action; Correction to Exchange of Public Lands in Mono County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of notice of realty action; exchange of public and private lands (CA 23982).

SUMMARY: This document corrects the Notice of Realty Action (CA 23982) published in Vol. 54, No. 2 pages 192 to 194, January 4, 1989. The above referenced notice should have included the following described land:

T. 3N., R. 25 E., M.D.M.,
Sec. 26, NE¼4NE¼.

Containing approximately 40.00 acres.

SUPPLEMENTARY INFORMATION: The above described land was inadvertently omitted from the land description in the above notice which is hereby corrected to include it. The parcel is contiguous with the rest of the land to be exchanged to the Bureau of Land Management.

DATE: On or before July 3, 1989, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630.

FOR FURTHER INFORMATION CONTACT: Michael G. Kelley, Folsom Resource Area Office, (916) 985-4474, or at the above address.

Dated: May 16, 1989.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 89-12225 Filed 5-18-89; 8:45 am]

BILLING CODE 4310-40-M

Realty Action; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action COC-49757, Recreation and Public Purpose Classification and Application for Lease, Fremont and Chaffee Counties, Colorado.

SUMMARY: The following public lands have been identified and examined and are hereby classified as suitable for lease under the Recreation and Public Purposes Act (R&PP), as amended, 43 U.S.C. 869 et seq., and are segregated from the public land laws including the general mining laws, except for applications for R&PP lease.

Sixth Principal Meridian, Colorado

T. 13 S., R. 79 W.,
Sec. 13; That portion of the W½NE¼ and the W½NW¼SE¼ lying east of the thread of the Arkansas River, containing approximately 65 acres and known as the Railroad Bridge parcel.

T. 15 S., R. 78 W.,
Sec. 3, SE¼SE¼ containing 40 acres known as the Fisherman's Bridge parcel.
Sec. 12, SW¼SW¼ containing 40 acres known as the Ruby Mountain parcel.

T. 15 S., R. 77 W.,
Sec. 31; that portion of Lot 3 west of the thread of the Arkansas River and extending 125 feet either side of Brown's Creek, containing 2 acres known as the Centerville parcel.

T. 18 S., R. 73 W.,
Sec. 35; that portion of the W½NE¼ between the center of U.S. Highway 50 and the thread of the Arkansas River, containing approximately 11 acres known as the Pinnacle Rock Recreation Site.
Sec. 25; that portion of the N½SE¼, being about 660 feet by 130 feet, lying between the thread of the Arkansas River and the center of U.S. Highway 50 containing 2 acres known as the Salt Lick site.

T. 18 S., R. 72 W.,
Sec. 14; that portion of Lot 2 lying between the thread of the Arkansas River and U.S. Highway 50, containing 2 acres and known as the Parkdale site.
Sec. 21; that portion of the S½SW¼NW¼ and the NW¼NW¼SW¼ between the thread of the Arkansas River and U.S. Highway 50 containing two acres known as the Bootlegger parcel.
Sec. 29; that portion of the N½NW¼NE¼ and the N½NE¼NW¼ between the thread of the Arkansas River and U.S. Highway 50 containing approximately 7 acres known as the Spike Buck recreation site.
Sec. 30; that portion of Lots 6 & 7 south of the thread of the Arkansas River containing approximately 40 acres and known as the Five Points Recreation Area.

T. 18 S., R. 71 W.,
Sec. 18; SE¼NW¼, NE¼SW¼, and that portion of the W½SW¼NE¼, SW¼NW¼SE¼, NW¼SW¼SE¼, N½SE¼SW¼, and the SW¼SE¼SW¼ lying west of the threat of the Arkansas River containing approximately 140 acres known as the Parkdale South parcel.

New Mexico Principal Meridian, Colorado

T. 51 N., R. 8 E.,
Sec. 23; SE¼SW¼, S½NE¼SW¼, and that portion of the W½SW¼SE¼ west of the thread of the Arkansas River.
Sec. 26; that portion of W½NE¼, NE¼NE¼NW¼, SE¼SE¼NW¼, E½NE¼SW¼, and W½NW¼SE¼ between the thread of the Arkansas River and the base of the hill on the west. This site contains approximately 90 acres known as Hecla Junction.

T. 49 N., R. 10 E.,
Sec. 28; that portion of Lots 8 and 9 between the thread of the Arkansas River and U.S. Highway 50 containing approximately 8 acres and known as the Rincon site.

T. 48 N., R. 12 E.,
Sec. 29; that portion of Lot 1 and the S½ NE¼ between the thread of the Arkansas River and U.S. Highway 50 containing approximately 30 acres known as the Lone Pine site.

The fourteen sites included in this action total approximately 479 acres. The sites are described as shown on the various maps published by U.S. Geological Survey, 7½ Minute Topographic series, which can be seen at the Royal Gorge Resource Area Office, BLM. State of Colorado Department of Parks and Outdoor Recreation has filed application for lease of these lands for the proposed Arkansas River Recreation Area.

FOR FURTHER INFORMATION CONTACT: Mac Berta, Area Manager, Royal Gorge Resource Area, BLM, P.O. Box 311, Canon City, Colorado 81212, Phone (719) 275-0631.

SUPPLEMENTARY INFORMATION: The purpose of the classification and application for lease is to allow recreational development investment on public land by the State of Colorado and to allow collection of a use fee for these facilities all along the Arkansas River. The segregative effect is to last as long as the property is leased and is to protect the investments in recreational developments. This action is in the public interest and is consistent with the Arkansas River Recreation Management Plan and Environmental Analysis and with the amendment of the Royal Gorge Management Framework Plan. The lease will be subject to any valid existing rights. Restrictions approved in the above plan will be incorporated. Although certain parcels are leased for grazing, no use actually occurs. All parcels will have grazing use excluded.

Comment Period

The lease will not be issued until at least 60 days after the date of publication of this notice in the Federal

Register. For a period of 45 days from the date of issuance of this notice interested parties may submit comments to the BLM, District Manager, P.O. Box 311, Canon City, Colorado 81212. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Stuart A. Parker,

Acting District Manager.

[FR Doc. 89-12003 Filed 5-18-89; 8:45 am]

BILLING CODE 4310-JB-M

[OR-130-09-4410-08; GP9-221]

Resource Management Plan Amendment; Invitation To Comment on the Fluid Mineral Resources Program

ACTION: Notice.

SUMMARY: A District Plan Amendment/Environmental Impact Statement Supplement will be prepared on the fluid mineral resources program with emphasis on the oil and gas leasing element. It will include discussions on all surface disturbing activities from geophysical activity through exploration, development, reclamation and abandonment.

The amendment is being done to fully describe and analyze two or more alternative proposals for the leasing program that comply with the Bureau of Land Management Supplemental Program Guidance for fluid minerals (BLM Handbook H-1624-1) and the National Environmental Policy Act.

This plan amendment may result in revised decisions regarding fluid mineral leasing on the federal mineral estate administered by BLM in eastern Washington. Approximately 1.5 million acres of federal surface and/or subsurface will be addressed in this plan.

The issues identified in the 1985 Spokane District RMP/EIS addressed conflicting land use activities on public land. Decisions based on this RMP have been, or will continue to be implemented.

No Major changes in this RMP are required. However, due to changes in BLM planning guidelines and policies concerning the fluid minerals program, it is necessary to amend the RMP.

These revised guidelines require BLM to identify public lands that are: Open to Oil and Gas Leasing Subject to Standard Terms and Conditions; Open Subject to Seasonal or Other Minor Constraints; Open Subject to No Surface Occupancy and Similar Major Constraints; or Closed to Leasing.

Other programs to be reviewed include Areas of Critical Environmental Concern, recreation and riparian area management. Since completion of the RMP in 1987, BLM has adopted new policies regarding these programs.

The interdisciplinary team which will prepare the RMP Amendment includes resource specialists in geology, soil science, hydrology, recreation, cultural and historical resources, access, range conservation, social-economics, and wildlife biology.

The list of possible issues identified below were developed as a result of the new guidelines and changes in policy identified above. The issues are written as questions that may need to be resolved. We are not asking for solutions, but for ideas that will help guide our planning efforts, and for any additional concerns or issues that you as a user or resource advocate may have. The list of issues are:

1. What areas should be: Open to fluid mineral leasing subject to standard terms and conditions; Open to fluid mineral leasing subject to seasonal or other minor constraints; Open to fluid mineral leasing subject to no surface occupancy, extensive seasonal restrictions or similar major constraints; or Closed to fluid mineral leasing?

2. What changes in the RMP are necessary to reflect BLM's responsibility for managing the recreaton activities in the Yakima River Canyon?

3. What changes in the RMP are necessary to reflect BLM's new riparian area management policy?

4. Should Webber Canyon Area Of Critical Environmental Concern designation be revoked?

Input from all segments of the general public, including other governmental agencies and the Spokane District's Advisory Council, will be an integral part of the finished plan. Public comments will also be solicited following the publication of draft planning criteria, during formulation of alternatives, after publication of the draft RMP Amendment, after publication of the final plan, and in the event of significant change(s) in the plan resulting from action on a protest.

All persons with an interest in management of the BLM, Spokane District lands and resources are requested to submit comments on the identification of issues by June 30, 1989. Comments and requests for further information should be addressed to Joseph Buesing, District Manager, Spokane District Office, East 4217 Main Avenue, Spokane, WA 99202. You can also call the office at (509) 353-2570 and ask that your name be included on the RMP Amendment mailing list. Anyone who wishes to discuss the BLM planning effort and availability of information and planning documents should contact the District Office. Planning documents will generally be available for public review at the Spokane District Office. Public announcements will indicate exact locations, dates and times of public meetings, workshops or open houses.

Dated: May 11, 1989.

David E. Sinclair,

Acting District Manager.

[FR Doc. 89-12002 Filed 5-18-89; 8:45 am]

BILLING CODE 4310-33-M

[MT-930-09-4214-10; MTN 924; MTN 27963]

Supplemental Notice of Proposed Withdrawals and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed applications to withdraw National Forest System lands for preservation of historical sites (41.85 acres) and a research natural area (210 acres). These lands are segregated from mineral entry and location under the mining laws, subject to existing valid claims, but remain open to mineral leasing.

DATE: Comments and meeting requests should be received on or before July 18, 1989.

ADDRESS: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, 406-255-2935.

SUPPLEMENTARY INFORMATION: The notice of proposed withdrawal for the historical charcoal kiln areas was published in the **Federal Register** on December 1, 1966 (31 FR 15098). An additional notice providing opportunity for public hearing was published in the **Federal Register** on July 8, 1977 (43 FR 35229). The notice of proposed withdrawal for the research natural area was published in the **Federal Register** on April 18, 1974 (39 FR 13902). An additional notice providing opportunity for public hearing was published September 21, 1977 (42 FR 47594).

1. The following described lands are temporarily segregated from mineral

location and entry under the mining laws:

Principal Meridian, Montana

Beaverhead National Forest

[MTN 924]

Trapper Creek Charcoal Kilns Area

T. 3 S., R. 10 W.,
Sec. 6, W½ of lot 1.

Canyon Creek Charcoal Kilns Area

T. 2 S., R. 10 W.,
Sec. 8, N½SE¼NW¼.

The areas described aggregate 41.85 acres in Beaverhead County.

[MTN 27963]

Cottonwood Creek Research Natural Area

T. 10 S., R. 3 W.,
Sec. 10, S½S½S½SE¼;
Sec. 11, S½SW¼SW¼SW¼;
Sec. 14, W½NW¼NW¼ and N½NW¼ SW¼NW¼; and
Sec. 15, N½NE¼, NE¼NW¼, E½NW¼ NW¼, and N½N½S½NE¼.

The area described contains 210 acres in Madison County.

2. For a period of 60 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director, Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director within 60 days from the date of publication of this notice. Upon determination by the State Director that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

3. The National Forest System lands described will continue to be segregated as specified until October 20, 1991, unless the application is denied or canceled, or the withdrawal is approved prior to that date.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

May 11, 1989.

[FR Doc. 89-12005 Filed 5-18-89; 8:45 am]

BILLING CODE 4310-DN-M

National Park Service

Great Basin National Park General Management Plan; Intention To Prepare an Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement for the General Management Plan (GMP) for Great Basin National Park, White Pine County, Nevada. The draft GMP, in addition to providing general management direction for the park's natural and cultural resources, will propose a new visitor center on Baker Ridge, a new entrance road and the location of administrative, housing, maintenance and some visitor information services in Baker, Nevada. Alternatives to be assessed include no action and other possible locations of the visitor center, administrative, housing and maintenance facilities and use of the existing entrance road.

Scoping for the GMP has been conducted over the past two years through a number of meetings and correspondence with state, Federal and local agencies, private organizations and the general public. However, if any party wishes to further express concerns or ideas regarding the future management of the park, or has questions on the GMP process, these comments and questions should be addressed to: Superintendent, Great Basin National Park, Baker, Nevada 89311. Scoping comments on the GMP should be received no later than 60 days from the date of this Notice.

The responsible official is Stanley Albright, Regional Director, Western Region, National Park Service. The draft environmental statement/GMP is expected to be released for public review in Spring 1990, and the final environmental statement and Record of Decision are expected to be completed by the end of 1990.

Date: May 5, 1989.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 89-12068 Filed 5-18-89; 8:45 am]

BILLING CODE 4310-HC-M

Plan for Proposed Mining Operations Within Bering Land Bridge National Preserve

AGENCY: National Park Service.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 *et seq.*, and in accordance with the provisions of section 9.17 of 36 CFR Part 9A, Cheryl Jong has filed a plan of operations in support of proposed mining operations on lands embracing the Humbolt Creek placer claim group located within the Bering Land Bridge National Preserve.

ADDRESSES: This plan is available for inspection during normal business hours at the following location:

Alaska Regional Office—Minerals Management Division, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503-2892.

FOR FURTHER INFORMATION CONTACT: Floyd Sharrock of the National Park Service—Minerals Management Division at the address given above; telephone 907/257-2626.

Richard J. Stenmark,

Acting Regional Director, Aslaska Region.

[FR Doc. 89-12070 Filed 5-18-89; 8:45 am]

BILLING CODE 4310-70-M

[Order No. 6, Amdt. 3]

Midwest Region Superintendents, et al.; Delegation of Authority

Order No. 6, approved February 25, 1977, and published in the **Federal Register** of May 17, 1977, (42 FR 25386), as amended, set forth in section 2 certain authorities and limitations of authority. This amendment changes paragraph (f) to read as follows and deletes paragraph (g):

Section 2. Delegation. * * *

(f) *Regional 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 incidental thereto; to accept deeds conveying to 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.

William W. Schenk,

Acting Regional Director.

Date: January 18, 1989.

[FR Doc. 89-12069 Filed 5-18-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: May 15, 1989.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Western Dairymen Cooperative, Inc.,
(2) 175 South West Temple G.L., P.O. Box 2730, Salt Lake City, Utah 84110–2730.
(3) 175 South West Temple G.L. 330, Salt Lake City, Utah 84110–2730.
(4) Scott Brown, P.O. Box 2730, Salt Lake City, Utah 84110–2730.

Noreta R. McGe

Secretary.

[FR Doc. 89–12029 Filed 5–18–89; 8:45 am]

BILLING CODE 7035–01–M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: ARC Incorporated, 3100 Hargrove Road East, Tuscaloosa, Alabama 35404
2. Wholly-owned subsidiaries which will participate in the operations. ARC Incorporated. Incorporated in Alabama.

Noreta R. McGee,

Secretary.

[FR Doc. 89–12028 Filed 5–18–89; 8:45 am]

BILLING CODE 7035–01–M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Nalley's Find Foods, a division of Curtice Burns Foods, Inc., 3303 South 35th Street, Tacoma, Washington, 98411.
2. Wholly owned subsidiaries which will participate in operations, and states of incorporation:

(i) Kennedy Endeavors, Inc., a Washington Corporation; and
(ii) Farman Brothers Pickle Co., Inc., a Washington corporation.

Noreta R. McGee,

Secretary.

[FR Doc. 89–11926 Filed 5–18–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub-No. 39X)]

Norfolk and Western Railway Co.; Discontinuance Exemption; Operations Between Toledo and Walbridge Junction, OH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over its 2.82-mile line of railroad between milepost TS–0.0 at Toledo, OH and milepost TS–2.82 at Walbridge Junction, OH.

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 discontinuance 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 18, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by May 30, 1989. Petitions for reconsideration must be filed by June 8, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

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 discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 24, 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 conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 15, 1989.

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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 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).

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-12030 Filed 5-18-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Investigation of the Effect of Annular Flow Characteristics in Full Scale Horizontal Wellbores Southwest Research Institute

Notice is hereby given that, on April 12, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its group research project regarding the "Investigation of the Effect of Annular Flow Characteristics in Full Scale Horizontal Wellbores." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the SwRI advised that Conoco, Inc. (effective December 27, 1988) has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project.

On February 9, 1989, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 21, 1989, 54 FR 11579.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-12008 Filed 5-18-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration, Abbott Laboratories

By Notice dated June 23, 1988, and published in the **Federal Register** on July 1, 1988, (53 FR 25017), Abbott Laboratories, 14th Street and Sheridan Road, Attn: Customer Service D-345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of bulk dextropropoxyphene (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

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

Dated: May 10, 1989.

[FR Doc. 89-12017 Filed 5-18-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Du Pont Pharmaceuticals

By Notice dated September 26, 1988, and published in the **Federal Register** on September 30, 1988, (53 FR 38366), Du Pont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Hydrocodone (9193)	II
Oxycodone (9143)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 10, 1989.

Gene R. Haislip,

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

[FR Doc. 89-12016 Filed 5-18-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Upjohn Co.

By Notice dated January 17, 1989, and published in the **Federal Register** on December 16, 1988, (53 FR 50597), Upjohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-dimethoxyamphetamine (7396)	I
Methamphetamine, its salts, isomers, and salts of its isomers (1105)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Gene R. Haislip,

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

Dated: May 10, 1989.

[FR Doc. 89-12015 Filed 5-18-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of

the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Pennsylvania Reemployment Bonus Demonstration Project
New
One-Time
Individuals or households
5,440 respondents; 1,813 total hours; 20 minutes per response; no forms

This project is being conducted to determine whether a bonus program for the UI system is beneficial and cost-effective. The follow-up survey will be used in conjunction with program data to obtain data necessary to analyze the process, impact and costs-benefits of the demonstration bonus project.

Extension

Employment Standards Administration
OFCCP Recordkeeping/Reporting: Supply and Service
1215-0072
Annually
Businesses or other for-profit; Non-profit institutions; Small businesses or organization
4,286 respondents; 21,865,004 total hours

These responses represent various obligations incurred by Federal contractors. Certain recordkeeping and affirmative action obligations and being subject to a compliance review onsite are the major components. These are necessary to ensure compliance with nondiscrimination and affirmative action obligations of Executive Order 11246, section 503 of the Rehabilitation Act of 1973 and 38 U.S.C. 2012.

OFCCP Recording/Reporting: Construction
1215-0163
Annually
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
33,333 respondents; 5, 205,601 total hours; 156.17 hours per response; 1 form

These responses represent various obligations incurred by being a construction contractor receiving Federal monies. Certain recordkeeping and affirmative action obligations and being subject to an onsite compliance review are the major components. These are necessary to ensure compliance with Executive Order 11246, section 503 of the Rehabilitation Act of 1973 and 38 U.S.C. 2012

Signed at Washington, DC this 15th day of May, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-12065 Filed 5-18-89; 8:45 am]

BILLING CODE 4510-27-M

Commission on Workforce Quality and Labor Market Efficiency; Meeting

The Commission on Workforce Quality and Labor Market Efficiency was established under the provisions of the Federal Advisory Committee Act to increase the excellence of the American workforce.

A meeting of the Commission on Workforce Quality and Labor Market Efficiency will be held on June 20, 1989, commencing at 1:00 p.m., in the Board of Governors Hall of the American Red Cross Building at 17th between D and E Streets NW., Washington, DC. This meeting is open to the public; ample seating is available.

The purposes of the meeting are to:

1. Consider reports from the subcommittee meetings held on June 3-4, 1989, in Annapolis, Maryland.

2. Discuss a preliminary draft of the final report.

For additional information, contact: Laurie J. Bassi, Deputy Director, Commission on Workforce Quality and Labor Market Efficiency, U.S. Department of Labor, 200 Constitution Avenue NW., Room C-2313, Washington, DC 20210, telephone (202) 523-6836.

Individuals or organizations wishing to submit written statements to the Commission should send 40 copies to the addresss given above. Papers will be accepted and included in the record of the meeting if received on or before June 14, 1989.

On July 20, 1989, and thereafter, official records of the meeting will be available for public inspection at: Department of Labor, 200 Constitution Avenue NW., Room C-2313, Washington, DC.

Signed at Washington, DC this 12th day of May 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89-12066 Filed 5-18-89; 8:45 am]

BILLING CODE 4510-23-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional

statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described herein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. IA89–2 dated January 6, 1989.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize General Wage Determination No. IA89–1. See Regulations (Part 1 (29 CFR), Section 1.5). Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky:
KY89–1 (Jan. 6, 1989) ..... pp. 280–282.
KY89–2 (Jan. 6, 1989) ..... pp. 284–287.
KY89–4 (Jan. 6, 1989) ..... pp. 294–298.
KY89–6 (Jan. 6, 1989) ..... pp. 306–309.
KY89–29 (Jan. 6, 1989) ..... pp. 370a–370l p. 370r.
Maryland:
MD89–13 (Jan. 6, 1989) ..... p. 446.
New Jersey:
NJ89–2 (Jan. 6, 1989) ..... pp. 614, 617.
NJ89–3 (Jan. 6, 1989) ..... pp. 634–637.
NJ89–4 (Jan. 6, 1989) ..... p. 658.
Pennsylvania:
PA89–1 (Jan. 6, 1989) ..... pp. 838–841.
PA89–4 (Jan. 6, 1989) ..... pp. 870–971.
Tennessee:
TN89–16 (Jan. 6, 1989) ..... p. 1119.
TN89–17 (Jan. 6, 1989) ..... p. 1122a.
Virginia:
VA89–1 (Jan. 6, 1989) ..... p. 1124.
VA89–22 (Jan. 6, 1989) ..... p. 1184.
Listing by location (index) ..... pp. xxxix–xlii.

Volume II:

Michigan:
MI89–7 (Jan. 6, 1989) ..... p. 512.
Minnesota:
MN89–5 (Jan. 6, 1989) ..... pp. 558, 560, p. 582.
MN789–7 (Jan. 6, 1989) ..... pp. 568–570, pp. 571–575, pp. 579–580, p. 584.
MN89–8 (Jan. 6, 1989) ..... pp. 591–594.
MN89–15 (Jan. 6, 1989) ..... pp. 619–621, p. 626.
Nebraska:
NE89–6 (Jan. 6, 1989) ..... p. 731.
Listing by location (index) ..... pp. xxxix–xl.
Listing by location (index) ..... p. lv.

Volume III:

California:
CA89–2 (Jan. 6, 1989) ..... pp. 54–64d.
Colorado:
CO89–2 (Jan. 6, 1989) ..... p. 116.
CO89–4 (Jan. 6, 1989) ..... pp. 124–130.
Idaho:
ID89–1 (Jan. 6, 1989) ..... pp. 146–156b.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 12 day of May 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89–11904 Filed 5–18–89; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Allen-Stevens Drum Accessories, et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment

and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 30, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 30, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 8th day of May 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Allen-Stevens Drum Accessories (Company)	Somerset, NJ	5/8/89	4/18/89	22,874	Stampings.
Allied-Signal Aerospace (Workers)	Teterboro, NJ	5/8/89	4/12/89	22,875	Flight Data & Control Systems.
Baroid Corp. (Formerly NL Petroleum Serv.) Headquarters (Company).	Houston, TX	5/8/89	4/20/89	22,876	Oil & Gas.
Baroid Corp. Atlas Div. Headquarters (Company)	Houston, TX	5/8/89	4/20/89	22,877	Pipe Threading.
Baroid Corp. Bariod Div. Headquarters (Company)	Houston, TX	5/8/89	4/20/89	22,878	Mud.
Baroid Corp. MWD Div. Headquarters (Company)	Houston, TX	5/8/89	4/20/89	22,879	Oil & Gas.
Baroid Corp. Shaffer Div. Headquarters (Company)	Houston, TX	5/8/89	4/20/89	22,880	Do.
Baroid Corp. Sperry-Sun Drilling/Baroid Logging Systems Headquarters (Company).	Houston, TX	5/8/89	4/20/89	22,881	Do.
Berman Bros., Inc. (FLM-FJC,UFCW)	New York, NY	5/8/89	4/21/89	22,882	Coats & Jackets.
Beta Handbag (Workers)	Hialeah, FL	5/8/89	4/19/89	22,883	Ladies' Handbags.
Weiss Bros. Fur Co. (FLM-FJC)	Manhattan, NY	5/8/89	4/17/89	22,884	Fur Garments.
Cardone & Baker (ACTWU)	Brooklyn, NY	5/8/89	4/17/89	22,885	Ladies' Shoes.
Elco Corp.-Huntingdon, Div.	Hintingdon, PA	5/8/89	4/20/89	22,886	Electronic Components.
Federal Mogul-Signal-Stat Div. (IAMAW)	Somerset, NJ	5/8/89	4/20/89	22,887	Lighting Safety Equipment.
Fenn Wright & Manson (Workers)	New York, NY	5/8/89	4/19/89	22,888	Men's & Ladies' Sportswear.
G. Ikola Inc. (Workers)	McCall, ID	5/8/89	4/7/89	22,889	Logs.
Gator Industries (Workers)	Hialeah, FL	5/8/89	4/20/89	22,890	Ladies', Mens' & Children's Shoes.
Greenwood Mills Inc. (Workers)	New York, NY	5/8/89	4/25/89	22,891	Fabrics.
Hyster Co. (Workers)	Sulligent, AL	5/8/89	4/10/89	22,892	Lift Truck Transmissions.
IBM Systems Technology Div. (Workers)	Colorado Springs, CO	5/8/89	4/17/89	22,893	Telecommunications Systems.
ITT Corp., Avionics Group (Workers)	Clifton, NJ	5/8/89	4/21/89	22,894	Aircraft Electronics.
Kearfott Guidance & Navigation Corp. (Workers)	Little Falls, NJ	5/8/89	4/3/89	22,895	Computer Test Equipment.
LaMontre Case Co., Inc. (RWDSU)	Long Island City, NY	5/8/89	4/15/89	22,896	Watch Cases.
Levolor Lorentzen, Inc. (Workers)	Weirton, WV	5/8/89	4/17/89	22,897	Ventian blinds.
Martin Lithographers (Workers)	Plainview, NY	5/8/89	4/19/89	22,898	Offset Printing.
Microwave Semiconductor Corp. (Workers)	Somerset, NJ	5/8/89	4/8/89	22,899	Electronic Components.
Parker & Parsley Petroleum Co. (Company)	Midland, TX	5/8/89	4/13/89	22,900	Oil & Gas.
Peerless Tube Co. (Workers)	Bloomfield, NJ	5/8/89	4/10/89	22,901	Tubes & Cans.
Pensilco Corp. (Company)	Bradford, PA	5/8/89	4/19/89	22,902	Silicon Wafers.
Philips Circuit Assemblies (Company)	West Lafayette, IN	5/8/89	4/20/89	22,903	Micro Electronics.
Plastic Box Corp. (Workers)	Wood Ridge, NJ	5/8/89	4/7/89	22,904	Plastic Packaging Materials.
Plastic, Inc. (Workers)	Winnebego, IL	5/8/89	4/20/89	22,905	Microwave Plastic Plates.
Proli Molding Co. (Workers)	Bloomfield, NJ	5/8/89	4/9/89	22,906	Toys & Instruments.
Schmid Labs, Inc. (UE)	Little Falls, NJ	5/8/89	4/5/89	22,907	Condoms.
Shure Electronics (Workers)	Phoenix, AZ	5/8/89	4/21/89	22,908	Cartridges and Microphone Components.
Tioga Mchine Shop (Workers)	Tioga, ND	5/8/89	4/14/89	22,909	Oil & Gas.
U.S.A. Knitwear Corp. (ILGWU)	Brooklyn, NY	5/8/89	4/21/89	22,910	Knit sweaters.
Tenneco Gas Pipeline Group (Company)	Houston, TX	2/27/89	2/2/89	22,553[1]	Market & Transport Natural Gas.

[1] Investigation Re-Opened.

[FR Doc. 89-12067 Filed 5-18-89; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Maryland State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902.

On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart 0 to Part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart 0 sets forth the State's schedule for the adoption of Federal standards. By letter dated April 12, 1989, from Commissioner Henry Koellein, Jr.,

Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted a State standard identical to: 29 CFR 1910.20 and Appendices A and B pertaining to revisions to Access to Employee Exposure and Medical Records as published in the **Federal Register** of September 29, 1988, (53 FR 38162). This standard is contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standard was promulgated after public hearings on January 27, 1989. This standard was effective on April 17, 1989.

2. *Decision.* Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are approved.

3. *Location of the Supplements for Inspection and Copying.* A copy of the standards supplements, along with the approved plan, may be inspected and copied at the following locations during normal business hours: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, Room N-3476, Third Street and Constitution Avenue NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective May 19, 1989.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Philadelphia, Pennsylvania, this 27th day of April 1989.

Linda R. Anku,

Regional Administrator.

[FR Doc. 89-12064 Filed 5-18-89; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before June 19, 1989.

ADDRESSES: Send comments to Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, Room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0494) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, Room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension

Title: The NEH Division of Education Programs—Application Instructions and Forms.

Form Number: Not Applicable.

Frequency of Collection: Collections occur annually or semiannually, according to individual program application deadline.

Respondents: Individual or households. Academic scholars—teachers, administrators.

Use: Application for funding.

Estimated Number of Respondents: 275.

Frequency of Response: (Once).

Estimated Hours for Respondents to Provide Information: 10 per respondent.

Estimated Total Annual Reporting and Recording Burden: 2750.

Susan H. Metts,

Assistant Chairman for Administration.

[FR Doc. 89-12071 Filed 5-18-89; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Design Manufacturing Systems; Reestablishment

The Assistant Director for Engineering has determined that the reestablishment of the Advisory Committee for Design Manufacturing Systems (formerly titled Advisory Committee for Design, Manufacturing, and Computer-Integrated Engineering) is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

May 16, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-12099 Filed 5-18-89; 8:45 am]

BILLING CODE 7555-01-M

Amendment to Meeting Notice; Mechanical

The agenda for the Division of Mechanical and Structural Systems Advisory Committee meeting on May 17-18, 1989 (published on April 27, 1989) is being amended to include a closed session in order to conduct oversight reviews of the division's programs. The agenda is as follows:

Wednesday, May 17

8:30-9:00—Opening remarks, introductions, and approval of 1988 minutes. (Open)

9:00-Noon—Oversight review of individual programs, including examination or proposal jackets, reviewer comments, and other privileged materials. (Closed)

1:00-5:00—Status of Plans for division and Task Group (Open) meetings.

Thursday, May 18, 1989 (Open)

8:30-noon—Oversight and Task Group Reports.

1:30-3:30—Drafting of Task Group and Oversight Recommendations and closing remarks by Assistant Director for Engineering.

Reason for Closing

The closed portion of the meeting will consist of a review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

May 15, 1989.

[FR Doc. 89-12020 Filed 5-18-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-348 and 50-364]

Alabama Power Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-2 and NPF-8, issued to Alabama Power Company, (the licensee) for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, (Farley Units 1 and 2 or Farley Plant) located in Houston County, Alabama.

Environmental Assessment

Identification of Proposed Action

The amendments would consist of changes to the operating licenses to extend the expiration dates of the operating licenses from August 16, 2012 to June 25, 2017 for Farley Unit 1, and to March 31, 2021 for Farley Unit 2. The proposed license amendments are responsive to the licensee's application dated August 11, 1986, supplemented July 22, 1987. The Commission's 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 Dates of Facility Operating Licenses NPF-2 and NPF-8, Alabama Power Company, Joseph M. Farley Nuclear Plant, Units 1 and 2, Docket Numbers 50-348 and 50-364," dated May 12, 1989.

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed changes in expiration dates of the operating licenses for the Joseph M. Farley Nuclear Plant, Units 1 and 2. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Related to Construction of Joseph M. Farley Nuclear Plant, Unit 1 and Unit 2," June, 1972; the "Final Environmental Statement Related to Operation of Joseph M. Farley Nuclear Plant, Units 1 and 2," December 1974; NUREG-0727, Addendum, September 1980, and more recent NRC policy.

Radiological Impacts

The staff concludes that the Exclusion Area (owned and controlled by the licensee), the Low Population Zone (area within 2 miles of site), and the nearest population center distances will probably be unchanged from those described in the June 1972 and December 1974 Final Environmental Statements (FES). Based on the 1980 census, the population density within 10 miles of the plant remains essentially the same low density as was estimated to live within the 10-mile zone based upon the 1970 census. As shown in Table 5.4 of the 1974 FES, the total number of residents within the 10-mile zone should remain about 11,000. With the slow, small increases in the number of people living within the 10-mile zone and with the continuing rural nature of the area, the current and future estimated population around the plant should pose no problem to the proposed extension of the operating licenses.

The additional period of plant operation would not significantly affect the probability or consequences of any reactor accident. Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulations regarding as-low-as-is-reasonably-achievable (ALARA) limits, and are indicative of future releases. The proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operation, the occupational exposures for Farley Units 1 and 2 have been less than the industry average for pressurized water reactors. The licensee is striving for further dose reductions in accordance with ALARA principles. We expect further dose reductions to be achieved by the use of advanced technologies and equipment that will likely become available.

Accordingly, annual radiological impacts on man, both offsite and onsite, are not more severe than previously estimated in the FES. Our previous cost-benefit conclusions remain valid.

The environmental impacts attributable to transportation of spent fuel and radioactive waste from the Farley Plant, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S-4 of 10 CFR 51.52. The values in Table S-4 would continue to represent the contribution of transportation to the environmental costs associated with plant operation.

Non-Radiological Impacts

The Commission has concluded that the proposed extensions will not cause a significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the FES.

Finding of No Significant Impact

The Commission has reviewed the proposed changes to the expiration dates of the Joseph M. Farley Nuclear Plant, Units 1 and 2, facility operating licenses relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendments will not have a significant effect on 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 amendments.

For further details with respect to this action, see (1) the application for amendments dated August 11, 1986, as supplemented on July 22, 1987; (2) the Final Environmental Statement for the Joseph M. Farley Nuclear Plant, Unit 1 and Unit 2, issued June 1972; (3) the Final Environmental Statement Related to Operation of Joseph M. Farley Nuclear Plant; Unit 2, issued December 1974; (4) NUREG-0727 Addendum, issued September 1980, and (5) the Environmental Assessment dated May 12, 1989. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothen, Alabama 36302.

Dated at Rockville, Maryland, this 12th day of May 1989.

For The Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II.

[FR Doc. 89-12078 Filed 5-18-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260 and 50-296]

Tennessee Valley Authority, Browns Ferry Nuclear Plant, Units 1, 2, and 3; 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 Nos. DPR-33, DPR-52 and DPR-68, issued to Tennessee Valley Authority (TVA, the licensee), for operation of the Browns Ferry Nuclear Plant (BFN), Units 1, 2 and 3, located in Limestone County, Alabama.

Identification of Proposed Action

The current operating licenses for the Browns Ferry Nuclear Plant, Units 1 and 2 expire on May 10, 2007, and for Unit 3 on July 31, 2008. Accounting for the time that was required for plant construction, this represents an effective operating license of approximately 33 years and 5 months for Unit 1, and 31 years and 11 months for Units 2 and 3. The licensee's application dated October 24, 1988 requests an extension of the expiration dates so that the fixed period of the licenses would be 40 years from the date of the operating license issuance for each unit. The Commission's 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 Dates of Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68, Tennessee Valley Authority, Units 1, 2 and 3, Docket Nos. 50-259, 50-260 and 50-296," dated May 10, 1989.

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration dates of the Operating Licenses for BFN, Units 1, 2 and 3. This evaluation considered all the previous environmental studies, including the Final Environmental Statement (construction permit and operating license) (FES) for the Browns Ferry Nuclear Plant, Units 1, 2 and 3, dated September 1, 1972.

Radiological Impacts

In the FES, TVA has calculated the offsite population doses based on the population estimates for the year 2010. The radiological impacts to offsite individuals due to releases of radioactive liquid and gaseous waste from the plant remain well within all applicable regulatory limits. Computed gaseous offsite doses are typically less than 10 percent of the 10 CFR Part 50, Appendix I, guidelines (for a three-unit plant) of 30 millirad/year gamma and 60 millirad/year beta air dose and 45 millirem/year organ dose. Computed offsite liquid doses are typically less than 15 percent of the 10 CFR Part 50, Appendix I, guidelines of 9 millirem/year total body and 30 millirem/year organ dose for a three-unit plant. Radioactive effluent releases are controlled by the technical specifications in section 3.8. These specifications implement the release limits specified in 10 CFR Part 20 and set performance goals based on 10 CFR Part 50, Appendix I. The BFN Final Safety Analysis Report (FSAR), section 2.2.2, provides the population density distribution around the site. Population projections are based on county projections for Tennessee, Mississippi, and Alabama by the Office of Natural Resources and Economic Development. The population is estimated, by the licensee in its letter of March 24, 1989, to increase to 62,100 in the year 2016, an increase of approximately eight percent from the year 2008 (the Unit 3 current license term). Doses projected for offsite population in the year 2016 were calculated by the licensee to be about eight percent greater than estimated for the year 2008. However, population doses would remain less than 0.02 percent of the natural background dose to the offsite population. Therefore, the staff agrees with the licensee and concludes that the higher projected population for 2016 would not change the overall conclusions of the FES concerning radiological consequences.

With regard to normal plant operation, the licensee complies with Commission guidance and requirements for keeping radiation exposures "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology when available and appropriate. Accordingly, radiological impacts on man, both onsite and offsite, are not significantly more severe than previously estimated in the FES and the previous conclusions remain valid.

The environmental impacts attributable to transportation of fuel and waste to and from the Browns Ferry site, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S-4 of 10 CFR 51.52, and the values in Table S-4 would continue to represent the contribution of transportation to the environmental costs associated with the reactor.

Non-Radiological Impacts

The Commission has concluded that the proposed extension will not cause a significant increase in the impacts to the environment and will not change any conclusions reached previously by the Commission.

Finding of No Significant Impact

The Commission's staff has reviewed the proposed change to the expiration dates of BFN, Units 1, 2 and 3, Facility Operating Licenses 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 non-radiological impacts associated with the proposed action and that the proposed license amendments will not have a significant effect on 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 amendments.

For further details with respect to this action, see (1) the application for amendments dated October 24, 1988, and supplemental letter dated March 24, 1989, (2) the Final Environmental Statement (construction permit and operating license) for the Browns Ferry Nuclear Plant Units 1, 2 and 3, dated September 1, 1972 and (3) the Environmental Assessment dated May 10, 1989. These documents are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, Washington, DC 20555 and at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 10 day of May 1989.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-12080 Filed 5-18-89; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable of the NRC staff for implementing specific parts of the Commission's regulations, techniques

used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.157, "Best-Estimate Calculations of Emergency Core Cooling System Performance," describes models, correlations, data, model evaluation procedures, and methods that are acceptable to the NRC staff for meeting the requirements for a realistic or best-estimate calculation of emergency core cooling system performance during a loss-of-coolant accident and for estimating the uncertainty in that calculation.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to be Regulatory Publication Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price.

Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 15th day of May 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord, Director,

Office of Nuclear Regulatory Research.

[FR Doc. 89–12081 Filed 5–18–89; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 to Regulatory Guide 1.114, "Guidance to Operators at the Controls and to Senior Operators in the Control Room of a Nuclear Power Unit," describes a method acceptable to the NRC staff of complying with the Commission's regulations that require the presence of an operator at the controls of a nuclear power unit and a senior operator in the control room from which the nuclear power unit is being operated.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Feedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price.

Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 15th day of May 1989.

For the Nuclear Reglatory Commission.

Eric S. Beckjord, Director,

Office of Nuclear Regulatory Research.

[FR Doc. 89–12082 Filed 5–18–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Co.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied the request by Carolina Power & Light Company (the licensee) for amendments to Facility Operating Licenses No. DPR–71 and DPR–62 issued to the licensee for operation of the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 8, 1987 (52 FR 11355) and on February 24, 1988 (53 FR 5487).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) related to the operability of on and offsite electrical power sources, in part, to conform to guidance of the General Electric Company's (GE) BWR/4 Standard Technical Specifications (STS).

The NRC staff has advised the licensee that the amendment is denied. The staff is currently reviewing the GE STS and no determination of their acceptability has yet been made. Therefore, the staff is denying the proposed request pending generic action on the GE STS for lack of Technical justification.

The licensee was notified of the Commission's deferral of action proposed by a letter dated May 12, 1989.

By June 19, 1989, the licensee may demand a hearing with respect to the action described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina, 27602, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 2, 1987 and licensee letters dated September 2 and October 30, 1987, and (2) NRC letters dated July 30 and October 16, 1987.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina, 28403–3297.

A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission,

Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 12th day of May 1989.

For the Nuclear Regulatory Commission.

Elinor G. Adensam, Director,

Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-12079 Filed 5-18-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-20317, License No. 35-23154-01, EA No. 89-67]

P&L Trucks; Order To Show Cause Why License Should Not Be Suspended and Revoked

I

P&L Trucks, Wetumka, Oklahoma (licensee) is the holder of Materials License No. 35-23154-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on August 21, 1985, and due to expire on January 31, 1990. The license authorizes P&L Trucks to possess sealed radioactive sources containing americium-241 for use in well-logging of oil and gas wells and to possess radioactive iodine-131 and iridium-192 for use in tracer studies of oil and gas wells.

II

NRC Region IV discovered in 1987 that P&L Trucks was no longer in business at the location specified in its NRC license for the storage of its licensed radioactive material. Following extensive efforts to locate the licensee, contact was made with Mr. Don Riley, the company's president, in January 1989 and Mr. Riley agreed to the following requests:

(1) To maintain his licensed radioactive material in locked storage (in his well-logging truck) at its current location in Wetumka, Oklahoma, pending NRC authorization to move it;

(2) To request an amendment to P&L Trucks' license to correct the specified location for storage of material and to correct the mailing address;

(3) To provide NRC with a list of the types of licensed radioactive material possessed at the former storage location in Pauls Valley, Oklahoma; and

(4) To respond to a Notice of Violation that NRC sent to the licensee on August 21, 1987, and reissued on November 18, 1988, which was issued on the assumption that the licensee had discontinued licensed well-logging activities.

Mr. Riley's commitments, which were to be completed by January 27, 1989, were restated in a Confirmation of Action Letter (CAL) issued to the licensee by NRC Region IV on January 27, 1989. The licensee responded to the CAL in a letter dated February 26, 1989, but did not make a formal request to amend the license to reflect the current location for storage of licensed material and did not respond to the Notice of Violation.

NRC Region IV conducted an announced inspection of this licensee on March 22, 1989 and found the licensee in apparent violation of numerous NRC requirements. These apparent violations are summarized here:

(1) The licensee failed to maintain adequate records of radiation exposures to individuals as required by 10 CFR 39.65(c).

(2) The licensee failed to maintain records of radioactive material utilization as required by 10 CFR 39.39(a).

(3) The licensee failed to keep records of leak tests of sealed radioactive sources as required by 10 CFR 39.35(a) and there is no indication that leak tests were performed as required by 10 CFR 39.35.

(4) The licensee failed to keep records showing the receipt of radioactive material as required by 10 CFR 30.51.

(5) The licensee failed to conduct inventories of sealed radioactive sources as required by 10 CFR 39.37.

(6) The licensee failed to maintain records of surveys performed prior to transporting material as required by 10 CFR 39.67.

(7) The licensee failed to calibrate its radiation survey instrument within 6 months as required by 10 CFR 39.33.

(8) The licensee failed to store material at the storage location specified in the license.

(9) The licensee failed to storage material in a storage facility as described in the license application.

The licensee was unable, in the absence of utilization records, to estimate when licensed material had last been used in well-logging activities. However, Mr. Riley stated that he had used the sealed americium-241 source to perform well-logging activities sometime between August 1985, when the license was issued, and the date of the inspection.

The results of the NRC inspection are described in an Inspection Report sent to the licensee on May 5, 1989.

III

On April 13, 1989, NRC Region IV personnel again contacted Mr. Riley to offer him an opportunity to discuss NRC's concerns at an Enforcement Conference. The stated purpose of the Enforcement Conference was to provide a further opportunity for the licensee to confirm or refute the apparent violations, produce any required records that might be located, and understand the enforcement actions that might be taken by NRC in this case. Mr. Riley declined the offer to participate in the Enforcement Conference, stated that he had no additional records to offer, and indicated that he may wish to amend his license to provide for storage of material only.

IV

The foregoing events indicate that the licensee has made little or no effort to develop and maintain a program for ensuring compliance with the conditions of its NRC license and NRC regulations. Based on the number of apparent violations and the inability of the licensee to produce required records regarding the use of licensed material, the licensee is either unwilling or unable to meet Commission regulations. Therefore, I lack the requisite reasonable assurance that this licensee, if permitted to engage in licensed activities, will comply with Commission requirements. Accordingly, I have determined that Materials License No. 35-23154-01 should be formally suspended, that the licensee should be required to transfer all licensed material to an authorized recipient and, thereafter, that the license should be revoked. Because I find that the public health, safety, and interest so require, I have further determined that, pursuant to 10 CFR 2.201(c), no prior notice of violation is required and that, pursuant to 10 CFR 2.202(f), this Order should be effective immediately.

V

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Section 2.202 and 10 CFR Parts 30 and 39, it is hereby ordered, effective immediately, That:

A. NRC Materials License No. 35-23154-01 is suspended except as provided in Sections V.B. and V.C. The licensee shall not receive any licensed material.

B. The licensee shall continue to maintain all licensed material in locked storage in accordance with the commitments stated in the January 27, 1989 Confirmation of Action Letter, and shall not transport said material without prior authorization from NRC Region IV.

C. Within 60 days of the date of this Order, the licensee shall cause the licensed material now in its possession to be leak tested in accordance with

Condition 13 of License No. 35–23154–01; and the licensee shall transfer all licensed material to an authorized recipient. At least one working day prior to such transfer, the licensee shall notify NRC of the name, address, and location of the person to whom the material will be transferred. The notification shall be made to Dr. Dale Powers of the NRC Region IV office (817–860–8195).

D. Within 10 days after the actual transfer of the material, the licensee shall certify, in writing, under oath or affirmation, that all licensed material has been transferred to a licensed recipient and that no licensed material is still in its possession. That certification shall be accompanied by a completed form NRC–314 and shall be addressed to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

E. Upon written approval of NRC Region IV of the information submitted under Section V.D., NRC Materials License No. 35–23154–01 is revoked.

The Regional Administrator, NRC Region IV, may, in writing, relax or rescind any of these provisions for good cause shown.

VI

Pursuant to 10 CFR 2.202(b), the licensee may show cause why this Order, in whole or in part, should not have been issued by filing a written answer under oath or affirmation within 20 days of the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies. The licensee may answer, as provided in 10 CFR 2.202(d), by consenting to the entry of this Order. If the licensee fails to file an answer within the specified time, consents to this order, or fails to request a hearing in accordance with section VII below, this order shall be final without further proceedings.

VII

The licensee or any other person adversely affected by this Order may request a hearing on all or any aspect of this Order within 20 days of the date of this Order. Any answer to this Order or request for a hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the licensee 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). An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Dated at Rockville, Maryland, this 11th day of May 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 89–12084 Filed 5–18–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–353A]

Philadelphia Electric Co., No Significant Antitrust Changes—and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the previous antitrust operating license review of Unit 1 of the Limerick Generating Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activites or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the issuance of the Limerick Generating Station Unit 1 (Limerick) operating license of the Philadelphic Electric Company, the staffs of the Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that occurred since the Limerick 1 antitrust operating license review are not the nature to require a second antitrust review at the operating license stage of the application. In reaching this conclusion, the staff considered the structure of the electric utility industry in eastern Pennsylvania and the Pennsylvania-New Jersey-Maryland pooling area, the events relevant to the Limerick, 1 operating license review and the events that have occurrred subsequent to the Limerick 1 operating license review.

The conclusion of the staff analysis is as follows:

Section 105c of the Atomic Energy Act of 1954, as amended, provides for prelicensing antitrust reviews of commerical power reactors at the construction permit and operating license stages of the licensing process. The antitrust operating license review is not intented to a *de novo* review but is focused only on those activities of the licensee(s) that have occurred since the completion of the construction permit review.

This concept of reviewing only significant changes in the licensee's activities at the operating license stage has been applied by the staff to reviews of multiunit plant applications. For those plants with multiple reactor licenses, the staff conducts separate antitrust reviews for each reactor when the reactors are licensed on a delayed or staggered schedule, i.e., when the rectors are scheduled to be licensed eighteen months or more apart.

As indicated *supra*, the antitrust operating license review of Limerick 1 was completed in July of 1984 and the reactor was licensed in August of 1985. Unit 2 of the Limerick Generating Station (Limerick 2) is scheduled to be licensed in August of 1989 and in light of the five years since the completion of the previous review of the licensee and four years since Limerick 1 was licensed, the staff intitiated a separate antitrust review of Limerick 2—with the focus of the review on any significant changes in the licensee's activities since the completion of the previous review in 1984.

The changes in the licensee's activities identified by the staff since the previous antitrust review have largely been associated with the normal business operations of a fully integrated and multi-interconnected utility system such as the licensee, Philadelphia Electric Company (PECo). PECo has been actively involved with other interconnected power systems in the Pennsylvania-New Jersey-Maryland (P-J-M) power pool and adjacent areas in an effort to improve the reliability and efficient operation of its power system. PECo has approached and has been approached by several P-J-M members and adjacent systems pursuant to the possibility of initiating various capacity and energy transactions associated with the commercial operation of Limerick 2. Though not all of these negotiations have proven to be fruitful to all of the parties concerned, the staff has no reason to believe that any undue

system. PECo has approached and has been approached by several P-J-M members and adjacent systems pursuant to the possibility of initiating various capacity and energy transactions associated with the commercial operation of Limerick 2. Though not all of these negotiations have proven to be fruitful to all of the parties concerned, the staff has no reason to believe that any undue (anticompetitive) pressure was exerted by PECo in any of these negotiations.

A dispute between PECo and one of its wholesale customers, the Borough of Lansdale, Pennsylvania (Borough or Lansdale), that developed as a result of the oil embargo of the 1970's, culminated in 1985 when Lansdale severed it ties with PECo. The staff reviewed the history associated with this dispute and determined that there was no basis to conclude that PECo's actions, which precipitated Lansdale's changing power suppliers, were inconsistent with the antitrust laws.

Staff believes that PECo's activities since the Limerick 1 antitrust operating license reivew, considered in conjunction with the overall P-J-M pooling environment, do not represent "significant changes" in the licensee's activities since the previous antitrust review and recommends that no affirmative significant change detemination be made pursuant to the operating license for Limerick 2.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensee's activities or proposed activities since the completition of the previous antitrust review.

Signed on May 12, 1989, by Thomas E. Murley, Director of the Office of Nuclear Reactor Regulation

Any person whose interest may be affected by this funding, may file, with full particulars, a request for reevaluation with the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the initial publication of this notice in the **Federal Register.** Requests for reevaluation of the no significant change determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only if they contain new information, such as information about facts or events of antitrust signifcance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland, this 15th day of May 1989.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Policy Development and Technical Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 89-12083 Filed 5-18-89; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for Office of Management and Budget Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Appeal Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.

(2) *Form(s) submitted:* HA-1.

(3) *OMB Number:* 3220-0007.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Revsion of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 1,150.

(9) *Total annual responses:* 1,150.

(10) *Average time per response:* .332 hours.

(11) *Total annual reporting hours:* 382.

(12) *Collection description:* Under sections 7(b)(3) of the Railroad Retirement Act and section 5(c) of the Railroad Unemployment Insurance Act, a person aggrieved by a decision on his or her application for an annuity or other benefit has the right to appeal to the RRB. The collection will provide the means for the appeals action.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,

Acting Director of Information Resources Management.

[FR Doc. 89-12053 Filed 5-18-89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26812; File No. 600-20; International Series—97]

Self-Regulatory Organizations; Order Approving Temporary Registration as a Clearing Agency of the International Securities Clearing Corporation

I. Introduction

On August 1, 1986, the International Securities Clearing Corporation ("ISCC") filed with the Commission an application under Section 17A of the Securities Exchange Act of 1934 ("Act") [1] for registration as a clearing agency. On August 14, 1986, the Commission published notice of the application in the **Federal Register** to solicit comments from interested persons.[2] No comments were received. ISCC amended its application on several occasions, most recently on March 30, 1989, when ISCC requested an exemption from section 17A(b)(3)(C) of the Act.[3] No comments on the amendments were received. This Order approves ISCC's application for registration as a clearing agency for a period of 18 months and exempts ISCC from Section 17A(b)(3)(C) of the Act for 18 months.[4]

II. Overview

ISCC is a wholly owned subsidiary of the National Securities Clearing Corporation ("NSCC"), a registered clearing agency.[5] NSCC formed ISCC to develop international clearance and settlement links with foreign financial institutions. ISCC was incorporated under the laws of New York in November 1985.

ISCC will offer services to three types of users: members, foreign financial institutions, and limited purpose participants. Members of ISCC generally

[1] 15 U.S.C. 78s(a) (1988).

[2] *See* Securities Exchange Act Release No. 23514 (August 6, 1986), 51 FR 29184 (August 14, 1986).

[3] *See* Securities Exchange Act Release No. 25594 (April 15, 1988), 53 FR 13210 (April 21, 1988) and Securities Exchange Act Release No. 26682 (March 31, 1989), 54 FR 14180 (April 7, 1989).

[4] Section 17A(b)(1) of the Act states that the "Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency * * * from any provisions of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds."

[5] For a discussion of NSCC as a registered clearing agency, *see* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983) ("Full Registration Order").

include U.S. banks and broker-dealers that meet ISCC's membership standards.[6] ISCC intends to link with non-U.S. clearing entities, or foreign financial institutions, so that ISCC members may obtain the benefits of the non-U.S. entity's comparison, clearance, settlement, and custodial services without becoming direct members of that entity. ISCC also intends to enter into link agreements with foreign financial institutions [7] that generally would enable foreign financial institutions to obtain for their members the services of the U.S. national clearance and settlement system. Members and foreign financial institutions collectively are known as participants. ISCC also will offer certain services that do not involve settlement obligations, such as the International Document/Securities Exchange Service, to users that qualify as Limited Purpose Participants.[8]

III. Statutory Standards

With certain exceptions not applicable here, section 17A of the Act requires a clearing agency, as defined in section 3(a)(23) of the Act, to register with the Commission.[9] ISCC, through its linkage agreements with foreign financial institutions to facilitate the clearance and settlement of international trades, falls within the section 3(a)(23) definition of a clearing agency and therefore is required to register with the Commission.[10]

Subparagraphs (A) through (I) of section 17A(b)(3) of the Act set forth specific determinations the Commission must make in granting registration. The Commission has published clearing agency registration standards ("Standards") that provide additional guidelines concerning the Division of Market Regulation's ("Division") interpretation of subparagraphs (A) through (I).[11] Specific references to the Standards appear below in applicable sections of the Commission's discussion.[12]

Section 17A(b)(1) and Rule 17Ab2–1(c) permit the Commission to grant a clearing agency temporary registration and exempt the registrant from one or more of the requirements under subparagraphs (A) through (I) of section 17A(b)(3). As noted above, the Commission is granting ISCC registration as a clearing agency for a period of 18 months, with conditional approval of an exemption from section 17A(b)(3)(C). During the temporary registration period, the applicant is, for all purposes under the Act, a registered clearing agency.

IV. Discussion

A. Scope of this Order

This order approves the temporary registration of ISCC as a clearing agency under section 17A of the Act for a period not to exceed 18 months. The determinations made today reflect a review of ISCC's by-laws and rules and all aspects of ISCC's operations detailed in its application.[13] The determinations also reflect discussions among Commission staff, ISCC, and ISCC participants.

The Commission expects to review its determinations within 18 months to consider whether to grant ISCC full registration as a clearing agency. During that time the Commission will monitor and oversee ISCC operations through review of proposed linkage agreements, rule changes under Section 19(b) of the Act,[14] notices to members,[15] and disciplinary filings.[16] The Commission staff also plans to inspect ISCC's facilities. Also, during the 18 month period, the Commission intends to monitor whether the exemption from section 17A(b)(3)(C) of the Act continues to be appropriate.

B. Capacity to Facilitate Prompt and Accurate Clearance and Settlement

Section 17A(b)(3)(A) of the Act provides that a clearing agency shall not be registered unless the Commission determines, among other things, that the clearing agency has the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.

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[6] *See* discussion *infra*.

[7] ISCC Rule 40.

[8] The International Document/Securities Exchange Service essentially is a courier service. *See* ISCC Rule 31. Limited Purpose Participants' obligations are set out in ISCC Rules 3 and 25, generally.

[9] The term "clearing agency" is defined, in pertinent part, as "any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities." See 15 U.S.C. 78c(a)(23) (1988).

[10] The staff of the Commission has issued no-action letters to ISCC enabling ISCC to enter into link agreements with four non-U.S. clearing entities. *See infra* note 13.

[11] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980) ("Standards Release").

[12] The Commission notes that the Standards were developed in the context of registration of ten clearing agencies engaged primarily in clearing domestic corporate debt and equity securities and to a lesser extent, municipal securities. The Commission recognizes that some of the Standards may not be appropriate for a clearing organization providing access to clearance and settlement systems for international trades. Accordingly, the Commission intends to apply the Division Standards flexibly and on a case-by-case basis. In addition, the Standards allow clearing agencies to submit reasons why a particular Standard may be inappropriate and to suggest alternatives that are consistent with the Act.

[13] ISCC has obtained permission through no-action letters from Division staff to operate several links. Although those links are not within the scope of this order, this order will refer to those links to evaluate ISCC's operational capacity. The four links currently subject to no-action positions are: (1) an outbound link with the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE") (letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to Karen Saperstein, Associate General Counsel, ISCC, dated September 10, 1986; and letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to Robert J. Woldow, General Counsel, ISCC, dated December 10, 1986); (2) an outbound link for the transmission of data to the Centrale de Livraison de Valeurs Mobilieres ("CEDEL") (letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to Karen Saperstein, Associate General Counsel, ISCC, dated September 13, 1988); (3) an inbound link for custody services with the Central Depository (Pte) Ltd. ("CDP"), a subsidiary of the Stock Exchange of Singapore, (letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to Karen Saperstein, Associate General Counsel, ISCC, dated March 23, 1988); and (4) an inbound custody link with Japan Securities Clearing Corporation ("JSCC") (letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to Karen Saperstein, Associate General Counsel, ISCC, dated September 20, 1988).

[14] In the past, the Commission staff has used no-action positions to permit ISCC to operate various linkages. The no-action letter arrangement is flexible in that it enables participants to achieve the benefits of links and allows the Commission to review the links' operations and the safeguards surrounding those operations. Now that ISCC has become a registered clearing agency pursuant to this order, the Commission believes ISCC should implement any further proposed linkages, beyond those linkages currently the subject of no-action requests, as proposed rule changes in accordance with section 19(b) of the Act. In this regard, the Act requires self-regulatory organizations, such as ISCC, to file with the Commission all proposed rule changes for review to determine whether such proposals comply with the Act. The Act also provides an opportunity for public comment to ensure that the proposal's effect on participants and the markets is fully considered before such proposals are approved or disapproved. If ISCC wishes to vary any of the factual circumstances upon which the Commission's no-action responses were based, ISCC should submit rule change proposals in accordance with section 19(b). Moreover, ISCC should submit further requests to authorize new links in accordance with section 19(b) of the Act. Nevertheless, to the extent ISCC's previous no-action requests were designed to permit foreign financial institutions to participate in such links, such entities should continue to request no-action positions in order to participate in such links.

[15] Rule 17a–22 under the Act, 17 CFR 240.17a–22, requires that a registered clearing agency file with the Commission, within ten days of release, three copies of any material including manuals, notices, circulars, bulletins, lists or periodicals issued or generally made available to its participants or to other entities with whom it has a significant relationship.

[16] *See* Section 19(d) of the Act.

ISCC's rules, as the basic framework for the development of international clearance and settlement mechanisms through link agreements, are designed to facilitate the prompt and accurate clearance and settlement of international transactions between U.S. and non-U.S. market participants.

1. Need for Centralized Clearance and Settlement Facilities for International Securities Transactions

During the last ten years the world's securities markets have become increasingly linked, as regulatory barriers to participation in foreign markets are steadily being lowered, increasing investors' ability to participate in international trading.[17] U.S. participation in international trading is significant. In 1987, foreign activity in U.S. stocks totalled approximately $482 billion, an increase from approximately $278 billion in 1986. U.S. purchases and sales in foreign stocks totalled approximately $189 billion in 1987, an increase from approximately $100 billion in 1986. During the first six months of 1988 foreign activity in U.S. stocks was approximately $384 billion and U.S. activity in foreign stocks was approximately $142 billion.[18]

There are now nearly 500 companies whose shares are listed and traded outside their home countries.[19] For example, trading in Canadian shares in the United States is very active.[20] Additionally, a recent estimate indicated that about 80% of trading in Swedish shares and more than 20% of trading in French shares may occur on the ISE.[21]

International trading must be supported by efficient cross-border clearance and settlement mechanisms. This view repeatedly has been voiced by market participants. For example, participants at the Commission's 1987 Roundtable on the Internationalization of the Securities Markets agreed that the need for improved international clearance and settlement is the critical issue if internationalization of the world's securities markets is to continue.[22] Absent established international systems, broker-dealers and their institutional customers often are forced to devote substantial resources to each task related to trade settlement and must effect securities deliveries by physical means, on a trade-by-trade basis.

In its November, 1988, policy statement, *Regulation of the International Securities Markets*,[23] the Commission stated that the development of efficient and comparable automated national and international clearance, settlement, and payment systems is one of the most important international goals. In the near term, it is important to develop clearing linkages between existing clearance and settlement systems.[24] Clearing linkages facilitate cross-border settlements without compromising the essential soundness and integrity of each national clearance and settlement system.[25]

Firms with substantial international activity that execute several thousand international trades a day without adequate centralized clearance and settlement mechanisms are forced to report the details of their trades by telex and await confirmation by telex. This process is repeated for each transaction and each party to the trade, which often includes five other parties: the broker's client (investment manager), the client's custodian bank, and the *contra* broker, investment manager, and custodian bank.[26] Cash and securities are exchanged via transatlantic courier on a transaction-by-transaction basis.

This physical processing of transaction settlements often subjects the parties to costly delays and increased risk of loss and theft. When broker-dealers have no alternative except to settle transactions individually in such a decentralized manner, they place enormous burdens on their back-office processing capabilities, particularly during periods of high volume.[27]

One response to these problems has been the development of international clearance and settlement links among central facilities serving distinct local markets, which can offer international market participants centralized communication facilities; automated data processing; immobilization of securities certificates; and, through future enhancements such as netting, reduced money and securities transfer.[28] The creation of ISCC, whose primary function is to forge new clearance and settlement links, is a significant response to the increasing need for international clearance and settlement mechanisms.

2. ISCC Services

ISCC intends to act as a "window" through which members and foreign financial institutions may send their international securities transactions for centralized, automated clearance and settlement. Each link operates as a separate window, and each link agreement sets out the services to be performed by, and the responsibilities of, each party to the link. Links generally will be of two types: (1) Inbound links, whereby ISCC sponsors foreign financial institutions on behalf of themselves or their members into NSCC and the Depository Trust Company ("DTC") [29] and, through those entities, into the national clearance and settlement system ("National System"); and (2) outbound links, whereby ISCC arranges with a foreign financial institution to permit use of the foreign

[17] *See* Division of Market Regulation, *The October 1987 Market Break* (February 1988) at 11-1 ("Market Break Study").

[18] Office of the Secretary, United States Department of the Treasury, *Treasury Bulletin* (various issues). The 1988 data is estimated at the annual rate, not seasonally adjusted.

[19] *See* Bennett & Kelleher, The International Transmission of Stock Price Disruption in October 1987, *Fed. Res. Bank of N.Y. Qly. Rev.* 21 (Summer 1988).

[20] *See* Division of Market Regulation, *Internationalization Report*, dated July 27, 1987.

[21] *See, e.g.*, remarks of Robert D. Meyjes, Senior Vice President, Citicorp Investment Bank, at the SEC's Internationalization Roundtable.

[22] *See* Internationalization Report, *supra* note 20.

[23] *See* Securities and Exchange Commission, *Policy Statement on the Regulation of the International Securities Markets* (November 1988), Securities Act Release No. 6807, 53 FR 46963 (November 21, 1988).

[24] Implicit in these goals is the standardization of clearance and settlement procedures in active trading markets. The Group of Thirty, a private sector group of international businessmen and bankers, recently released a report recommending standardization of many areas of clearance and settlement. Among other things, the Group of Thirty recommended adoption of systems that permit book-entry delivery of securities, earlier and uniform comparison and settlement periods, and uniform securities identification numbering systems. *See* Group of Thirty, *Clearance and Settlement in the World's Securities Markets* (March 1989).

[25] The Federal Reserve Board also has recognized the importance of obtaining sound clearing and settlement systems, and supported the development of coordination between clearing and settlement systems. *See* Speech by Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System, before the Annual Convention of the Securities Industry Association (November 30, 1988).

[26] Disputes regarding the terms of the trade (for example, security, price, or quantity) are reconciled by the additional exchange of telex messages or telephone calls among the parties.

[27] To illustrate, one need only examine the crisis the U.S. securities industry faced in the late 1960s during a period of unprecedented volume. *See* Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916 (January 21, 1977) ("NSCC temporary registration order"); Securities and Exchange Commission, Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. 231, 92d Cong., 1st Sess. 13 (1971).

[28] *See generally* Becker & Etter, International Clearance and Settlement, 14 *Brooklyn J. Int'l. L.* 271 (1988).

[29] DTC is a registered clearing agency that acts as a custodian for securities. *See* Full Registration Order, *supra* note 5, 48 FR at 45178-82.

entity's clearance and settlement services by ISCC members.

Generally, links will entail efficient, automated data transmission and provide the capability of settling trades in the currency of the securities' domicile. Moreover, the increased automation and reliability that ISCC's links will bring to international trading also should promote market liquidity. Automation and centralization generally should lead to earlier settlements, which also frees capital more quickly.

The links offer to non-U.S. market participants the advantage of access to domestic clearance and settlement systems, and to U.S. market participants the advantage of access to the clearance and settlement systems of foreign financial institutions.

The Commission believes that it is important to develop clearing linkages among major national securities markets, as links provide a current viable means of clearing and settling international transactions and links do not depend on the existence of identical, or even comparable, systems in each country. Moreover, more frequent interchanges among international clearing entities may encourage clearing entities to strive for greater uniformity among their systems.[30] Greater contacts may encourage those markets where the development of efficient, automated systems has lagged to move forward more quickly.

a. *Inbound Links.* The U.S. national clearance and settlement system provides facilities for comparison, clearance, and settlement of trades in U.S. securities issues eligible for processing at NSCC and other registered clearing agencies, and access to DTC and other depositories for custody and other services for depository-eligible issues. Inbound links may provide non-U.S. market participants with indirect access to some or all of these services through ISCC sponsorship, [31] such as the National Over-the-Counter Comparison System [32] and the National Institutional Delivery System ("NIDS").[33] These systems enable centralized settlements of substantially all street-side and customer-side (institutional) trading in U.S. securities markets.

Inbound links also may provide access only to custodial services. Two such inbound links currently are operational: the ISCC/CDP link and the ISCC/JSCC link. [34]

The Commission believes that inbound clearing links provide many opportunities for reducing the cost and risk of international trading. One benefit is the capability of bookentry transfer of securities between U.S. banks or brokerdealers and their non-U.S. trading partners. Non-U.S. traders benefit from the ability to use National System services without having to become direct members of a registered, U.S. clearing agency. In addition, a linked U.S. clearing agency has the benefit of a financial intermediary (the linked foreign financial institution) between itself and the intermediary's members. Presumably, the greater familiarity the intermediary has with standards, customs, and rules in the home country makes it better equipped to monitor its members' activity.

b. *Outbound Links.* Outbound links also may vary in the scope of services provided. For example, outbound links, like inbound links, may entail custody, data communications, comparison, clearance or settlement, or some combination of these services. To date, the Division has considered two outbound ISCC links: (1) With ISE, which provides access by ISCC members to the ISE's comparison, clearance, and settlement system for transactions in U.K. equity securities; and (2) with CEDEL whereby ISCC transmits certain delivery and payment instructions to CEDEL on behalf of joint ISCC/CEDEL members.[35] The current ISCC/ISE limited pilot outbound link involves ISCC sponsoring members into ISE on a fully-disclosed basis for clearance and settlement of transactions in U.K. equity securities.[36] ISCC members thus obtain the comparison, clearance, settlement, and custodial services of ISE without having to become direct members of ISE.[37] Based

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[30] Although these linkage arrangements provide substantially improved mechanisms for clearance and settlement of international trades, they do not address the problem of coordinating settlements among foreign clearing entities with widely differing settlement cycles, system capabilities, or financial responsibility and operational standards. Some of these concerns, especially coordinated settlements across markets, are addressed by the Group of Thirty in its March, 1989 recommendations on clearance and settlement. *See* note 24, *supra.*

[31] ISCC intends generally to sponsor linked foreign financial institutions into NSCC and DTC. ISCC will make clearing fund contributions to NSCC and DTC, and will require the sponsored foreign financial institution to reimburse it for the amount of those contributions.

[32] The National Over-the-Counter Comparison System, operated by NSCC, includes comparison of over-the-counter transactions by NSCC members and by members of other registered clearing agencies.

[33] The NIDS system enables broker-dealers, investment managers, and custodian banks that are members of a securities depository (Midwest Securities Trust Company, Philadelphia Depository Trust Company, and DTC), directly or through other members, to confirm and affirm the terms of their trades, and, on the settlement date, automatically to debit or credit the members' cash and security accounts, as applicable. All the usual NIDS rules and procedures would apply.

DTC currently is operating a pilot program for its new International Institutional Delivery ("IID") System. The IID System also permits parties to an institutional trade to confirm and affirm the terms of their trades through DTC, but does not entail automated settlement at DTC. Instead, the IID System enables quick, efficient communications among parties so that agent banks and global custodians may notify sub-custodians of settlement instructions. The IID System accommodates foreign currencies and a variety of internationally-recognized securities identification numbering systems. Upon successful completion of the pilot program, DTC will offer the IID system to all participants, and eventually may offer the service to link participants. *See* Securities Exchange Act Release No. 26374 (December 20, 1988), 53 FR 52283 (December 28, 1988).

[34] Both the CDP and JSCC links involve ISCC sponsoring an account at DTC for custody of positions in U.S. securities held by members of CDP and JSCC, respectively. The links permit book-entry movement of securities, but are limited to free movements only. Thus, money settlements related to the securities movements take place directly between the parties. DTC also provides custody account maintenance services such as dividend and interest collection. To date, activity in the links has been minimal. In December 1988, for example, the JSCC link involved 13 receives and 33 deliveries of 1.6 million shares.

[35] The CEDEL link is operating with only one participant, but is expected to enable U.S. broker-dealers who are members of both CEDEL and ISCC to transmit transaction information through ISCC facilities to CEDEL to facilitate the settlement of transactions in international securities issues eligible for CEDEL clearance, settlement, and custody services.

Members submit data to ISCC in a standardized format, which ISCC transmits to CEDEL. CEDEL receives the transmissions, and settles and safekeeps securities in accordance with its usual procedures and the members' instructions, mails reports to the members, and provides reports to ISCC. ISCC makes these reports available to members on their terminals. Under the terms of the link agreement, ISCC does not sponsor or make available to members any securities clearance or settlement activities; instead, it enables members to communicate settlement instructions to CEDEL through the use of ISCC's communications facilities. The ISCC/CEDEL link only transmits data and is not intended to change CEDEL's processing mechanisms or relationships for the settlement of securities transactions.

[36] On December 23, 1988, ISCC, NSCC, and ISE submitted a request for a no-action position for an expanded clearance and settlement linkage. The expanded linkage would establish an inbound link between ISE and ISCC and also would make the current limited pilot outbound link more generally available. The Division intends to act on the no-action request in the near future.

[37] ISE's comparison system, called CHECKING, is substantially similar to comparison in the U.S. Settlement in the ISE's TALISMAN system differs from U.S. Settlement substantially, however. Settlement in the U.K. is not guaranteed by the ISE. Moreover, settlement in the U.K. occurs on one day for an entire trading period.

Under the link, ISCC acts as an intermediary for money payments, deliveries, instructions, and reports. Thus, instructions are submitted by members through ISCC to ISE, and processing

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on experience to date with the links, and in particular with the ISCC/ISE link,[38] the Commission believes ISCC is operating and has the capacity to operate links in compliance with the Act.

Outbound links provide U.S. market participants with many benefits. For example, the ISCC/CEDEL link will enable U.S. members to transmit instructions using ISCC's Global Compass software,[39] which will greatly simplify processing tasks. The ISCC/ISE link provides members an opportunity to participate in centralized, automated clearance and settlement systems in the marketplace where the transactions take place, without having to become direct members of the foreign financial institution. That ability offers the same advantages for reducing the cost and risk of international trading that were discussed in connection with inbound links. The foreign financial institution also has the benefit of participation by U.S. members under the sponsorship and discipline of a U.S. registered clearing agency.

C. Capacity to Safeguard Funds and Securities

As discussed in detail below, the Commission believes that ISCC has the capacity to safeguard securities and funds as required by section 17A(b)(3)(A) of the Act. The Commission bases that determination on its review of ISCC's rules, procedures, and facilities management arrangements. Specifically, the Commission has reviewed ISCC's internal accounting controls related to recordkeeping, data processing, and ISCC's financial risk management rules.

1. Facilities Management

ISCC has a facilities management arrangement with the National Securities Clearing Corporation ("NSCC"), its sole shareholder and a registered clearing agency owned by the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange, Inc. ("Amex"), and the National Association of Securities Dealers, Inc. ("NASD"). As a registered clearing agency, NSCC is subject to Commission oversight under the Act, which includes periodic Commission examinations and an annual review of its internal accounting controls by an independent accountant. NSCC has provided comprehensive clearing agency services for corporate equity and debt securities for more than ten years, and for municipal securities since 1980. NSCC is the largest clearing agency that offers comprehensive clearing services, and in 1987 processed an average of more than 450,000 transactions per day valued at approximately $19 billion.[40] NSCC has demonstrated to the Commission that it is a responsible and innovative clearing agency that complies with the Act.[41]

Under the facilities management arrangement, NSCC provides certain services directly to ISCC, and NSCC provides other services through its facilities manager, the Securities Industry Automation Corporation ("SIAC"), indirectly to ISCC.[42] Among the services NSCC provides directly to ISCC are management and administrative services, including financial, personnel, corporate communications, marketing, regulatory and compliance, legal matters, and technical services, including data processing, operations, planning and development, and communications matters. Among the services NSCC provides indirectly to ISCC through SIAC are clerical operations for, among other things, trade comparison and correction, forms distribution and inventory maintenance, billing and cashiering, and computer services related to all the technical and clerical services rendered by NSCC directly or indirectly.

a. *Link Facilities Management Arrangements.* Facilities management arrangements are established between ISCC and each foreign financial institution as part of the link agreements and may vary from link to link. As discussed above, inbound links may entail facilities management at NSCC and DTC, both of which are registered clearing agencies in which the Commission has confidence based on more than ten years experience. The outbound links necessarily will entail facilities management at whatever foreign financial institution is performing the comparison, clearance, settlement or custodial services. For example, ISCC must rely on the ISE as facilities manager for the activity sponsored through the ISCC/ISE link. Each foreign financial institution acting as facilities manager has a reputation within its financial community for providing the services offered through a link. The Commission and its staff will review the facilities management arrangements for each link on a case-by-case basis.

2. Recordkeeping and Data Processing

a. *Data Processing.* The Commission believes that the systemic and other controls surrounding ISCC's recordkeeping and data processing functions satisfy the requirements of the Act. NSCC, through SIAC, provides ISCC with redundant computer hardware and software and also provides backup computer capability. SIAC duplicates all incoming data daily and stores it at an offsite location, which enables SIAC to quickly reconstruct ISCC's data base in the

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reports from ISE are transmitted to ISCC, which makes them available to members. ISE calculates daily a member's net settlement cash position and transmits these reports to ISCC. On behalf of its members, ISCC will pay to, or receive from, ISE the net amount in dollars and the net amount in pounds sterling. Payment is made through bank accounts ISCC has established in London for cash settlement purposes. Upon settlement, unless otherwise instructed, ISE automatically will credit the member's book-entry custody account. Alternatively, the ISCC members, before settlement day, may instruct ISE, through ISCC, to register certificates in the member's name or in another name.

Under the link agreement, ISCC and ISE guarantee their members' payment obligations, provided that securities were deposited in the proper account on the day before settlement day and were allocated by ISE. Neither ISE nor ISCC is responsible for the failure of members to deliver securities. If ISCC incurs a liability to ISE, ISCC's retained earnings and clearing fund would be used in accordance with ISCC's loss allocation procedures to satisfy the liability. *See* discussion *infra*. In addition, NSCC has determined to guarantee the ISCC/ISE link. NSCC would be liable for losses remaining after ISCC's clearing fund and retained earnings were applied to the liability. NSCC may use its retained earnings and clearing fund (except for the Fund/Serv allocation) to satisfy the losses. *See* Securities Exchange Act Release No. 25999 (July 18, 1988), 53 FR 27915 (July 25, 1988).

[38] Recent statistics for the ISCC/ISE link show that, 23 trades settled during the account period whose settlement date was December 5, 1988. Fifteen of the trades settled in pounds sterling (£1,050,611) and 8 of the trades settled in U.S. dollars ($2,757,677).

[39] ISCC's Global Compass software is a menu-driven system that provides participants with a standardized format for entering trade data and clearance and settlement instructions required to effect international securities transactions

[40] *See* NSCC, *1987 Annual Report*, at 1.

[41] *See* Full Registration Order, *supra* note 5, 48 FR at 45178–82, in which the Commission determined that NSCC was operating in substantial compliance with the Act and granted NSCC full registration as a clearing agency.

[42] SIAC became facilities manager for NSCC when NSCC was first established in 1977. SIAC plans, develops, implements, and manages a variety of automated information-handling and communications systems for NSCC and others, including its owners, the Amex and NYSE. SIAC operates all the comparison systems for NSCC, including NYSE and Amex transactions, over-the-counter market transactions, and municipal bond transactions. SIAC also operates the Continuous Net Settlement system ("CNS") and Regional Interface Operation ("RIO") network for NSCC. The Commission believes, based on 15 years experience with SIAC in the exchange area and more than ten years experience with SIAC as NSCC's Facilities Manager, that SIAC is responsible and competent to provide services to ISCC through NSCC.

event of a disaster. The computer center is equipped with an independent source of power, air conditioning, and water to assure a continuous processing environment.

ISCC receives and transmits data to and from linked foreign financial institutions and members via computer to computer transmissions from dedicated terminals or personal computers (PCs) equipped with modems. ISCC uses commercial telecommunications systems, such as the General Electric Information Service ("GEISCO") telecommunications system, to transmit link data. ISCC has developed software to communicate with both its members and foreign financial institutions.[43] Upon receiving information, ISCC may perform edit checks, aggregate data, and reformat data into members' reports or into a form acceptable to foreign financial institutions.

b. *Recordkeeping.* The Commission believes that ISCC has the capacity to fulfill its recordkeeping responsibilities under the Act. ISCC's major recordkeeping responsibilities are to retain and make copies of all data it receives from members and foreign financial institutions, store it, and make it available to participants and the Commission upon request.

c. *Audit Requirements.* NSCC's internal audit department, on behalf of ISCC, reviews the adequacy of ISCC's systems and controls. The Audit Committee of ISCC's Board of Directors is composed of non-management directors. The Audit Committee oversees internal audit programs implemented by internal or NSCC auditors, makes a recommendation to the ISCC Board of Directors concerning the selection of ISCC's independent public accountant, and reviews the system of internal accounting control with the independent public accountant. Under ISCC's rules, the independent public accountant annually performs an evaluation of ISCC's internal accounting controls, and ISCC must make the accountant's opinion and reports available to all participants.

The extent of ISCC's auditors' access to books and records of linked foreign financial institutions varies from link to link.[44] Generally, auditors may consult with the linked entity's auditors about that entity's financial condition, and will obtain annual financial statements.

3. Financial Risk Management

The Commission believes that ISCC's rules are designed adequately to protect ISCC and its participants against financial losses associated with its services. The principal source of risk to ISCC and its participants is that participants may fail to pay their settlement obligations in a timely manner or may default on those obligations. ISCC has sought to limit that risk by establishing standards for applicants and continuing membership,[45] and imposing a clearing fund contribution requirement. In addition, ISCC has set forth loss allocation procedures for members and requires collateralization of obligations for foreign financial institutions that are not ISCC members but that participate through a link agreement with ISCC. Because ISCC is structured to link with clearance and settlement systems outside the United States, and different participants may participate in each link, the risk ISCC faces will vary from link to link and requires case-by-case consideration to ensure that ISCC has developed safeguards to minimize all appropriate risks.

ISCC's membership standards require applicants to have sufficient financial capacity. Broker-dealer participants must have excess net capital of at least twice the SEC's minimum net capital requirement and have a capital ratio that would not require the applicant to be placed on immediate surveillance by ISCC. Bank participants must have at least $50 million in capital or have furnished ISCC with a payment guarantee by its parent bank holding company (such parent holding company must have at least $50 million in capital). Trust company participants that are members of the Federal Reserve System or insured under the Federal Deposit Insurance Act must have consolidated capital of at least $10 million. Banks and trust companies must not be operating at a loss at the time of application and may not have operated at a loss in any of the previous three fiscal quarters.[46] Applicants are required to open their books and records to inspection by ISCC upon request,[47] and to submit an applicant questionnaire and FOCUS [48] reports, or other similar financial or regulatory reports where applicable.

Participants must submit adequate assurances of financial responsibility and operational capacity including, among other things, periodic additional reporting requirements, increased clearing fund deposits, or additional payments reflecting a percentage of the corporation's daily net debit position.[49] If a participant fails to meet these requirements, ISCC is authorized to take a variety of actions, including increasing the participant's clearing fund deposit,[50] limiting the participant's activity, or ceasing to act for the participant.[51]

ISCC established a clearing fund to help manage the risk of participant insolvency. ISCC requires all members to contribute to the clearing fund.[52] Each member must make a minimum deposit of $50,000 in cash. ISCC also may require additional amounts in excess of $50,000. These additional deposits are established by ISCC on a monthly basis according to a predetermined formula.[53] The

[43] ISCC uses its Global Compass software in connection with the ISE and CEDEL links. *See supra* note 39.

[44] For example, The ISCC/ISE link, which currently is the only link that includes money settlement, provides that ISCC's and ISE's internal and outside auditors may consult with each other concerning the financial condition of the other party and any activity related to link services. ISCC and ISE also provide each other audited annual and unaudited semi-annual financial statements. The ISCC/CDP link provides that CDP has become a member of ISCC and therefore CDP is subject to ISCC Rule 15 whereby ISCC has broad authority to examine a member's financial responsibility and operational capacity. The ISCC/JSCC link provides that JSCC's auditors are authorized to consult with ISCC about ISCC's financial condition. ISCC and JSCC also will furnish each other with annual and semi-annual financial statements, which may be unaudited.

[45] In accordance with section 17A(b)(3)(B) of the Act, ISCC's rules provide that the following categories of persons are authorized to become ISCC members: (1) registered brokers and dealers; (2) banks and limited purpose trust companies supervised by state or federal banking authorities; (3) registered clearing agencies; (4) regulated insurance companies; (5) registered investment companies; and (6) other entities that have demonstrated that their business and capabilities are such that they could reasonably expect material benefit from direct access to ISCC's Services. ISCC Rule 2.

[46] The Commission believes that in light of current activity, ISCC's capital requirements are adequate. The Commission is requiring ISCC to review these capital standards as activity increases, and to reconsider capital standards for members annually as part of its risk assessment.

[47] ISCC Rule 2, section 2(f).

[48] FOCUS reports are also known as SEC Form X-17-A-5, Financial and Operational Combined Uniform Single Reports. *See* ISCC Rule 15.

[49] ISCC Rule 15.

[50] ISCC Rule 4 and Rule 15, section 4(b).

[51] ISCC Rules 18 and 46.

[52] With respect to foreign financial institutions that participate in ISCC without becoming members subject to the clearing fund rules, ISCC requires collateralization of obligations. ISCC will determine on a case-by-case basis the appropriate financial arrangements to ensure adequate control over its financial risk.

The Commission understands that the required collateralization will not be less than the amount ISCC must pay to the NSCC or DTC clearing or participants' funds on behalf of the foreign financial institution. Moreover, the Commission expects that, in appropriate circumstances, ISCC will require collateralization significantly greater than that minimum.

[53] *See* Addendum A to ISCC Rules. The basis of the formula is use of ISCC's services.

additional clearing fund deposits over $50,000 may be composed of cash, government securities, and irrevocable letters of credit issued by approved banks.

ISCC's rules authorize ISCC to take steps to satisfy any obligations members fail to satisfy. In the event a member fails to satisfy an obligation to ISCC, ISCC may look to the member's clearing fund deposit to satisfy the obligation.[54] If the member's obligation still is not satisfied, ISCC may then apply retained earnings to satisfy the loss or liability.[55] If retained earnings are insufficient to eliminate the loss or liability, ISCC will apply amounts from other members' contributions to the clearing fund on a *pro rata* basis.[56] Based on the above rules and procedures, the Commission believes that ISCC's financial risk allocation scheme is designed to limit the risk of loss to participants.

4. Certificate Custody and Standard of Care

a. *Custodial Arrangements.* ISCC is not a depository and does not intend to maintain custody of physical securities certificates. Instead, for inbound links, ISCC has an agreement with DTC, a registered clearing agency, to safekeep DTC-eligible securities certificates held in an ISCC-sponsored DTC account on behalf of foreign financial institutions with which ISCC is linked. For non-U.S. securities in outbound links, ISCC link agreements will include provisions for ensuring that custodians outside the U.S. will safekeep securities.

The Commission believes that ISCC's custodial arrangements comply with Rules 8c–1 and 15c2–1 under the Act.[57] ISCC rules provide that ISCC will not have liens on customer securities where such liens would violate Commission rules 8c–l and 15c2–1.[58] Moreover, ISCC must provide for compliance with these rules in link agreements for outbound links that contemplate custodial services by foreign financial institutions.

b. *Standard of Care.* The Act requires clearing agencies to promote prompt and accurate clearance and settlement of securities and to safeguard securities and funds. Clearing agencies must ensure that adequate safeguards exist for both their custodial and non-custodial functions. ISCC obtains custodial services on behalf of its participants from sub-custodians. The standard of care for custody that ISCC provides is coextensive with that provided by the sub-custodian. With respect to inbound links, which enable foreign financial institutions to obtain custodial services in the U.S. for U.S. securities, ISCC obtains custodial services from DTC. As a registered clearing agency and a limited purpose trust company under state law, DTC is subject to the negligence standard of care regarding safekeeping participants' securities and funds.[59] With respect to outbound links, ISCC obtains custodial services from the foreign financial institution. For example, ISE is the custodian for U.K. securities settled through the ISCC/ISE link. The ISCC/ISE link agreement specifies that ISE is subject to the negligence standard of care.[60]

The Commission reviews non-custodial clearing agency services on a case-by-case basis [61] and, in determining the appropriate standard of care, balances the need for a high degree of clearing agency care with the effect the resulting liabilities may have on clearing agency operations, costs, and safeguarding securities and funds.[62] To date, ISCC generally has offered its services under a gross negligence standard of care, and has obtained the same standard of care from the non-U.S. exchanges and clearing entities with which it has entered into link agreements. The Commission believes that this standard of care is consistent with the Act and earlier interpretations of section 17A concerning non-custodial clearing agency functions. Historically, the Commission has left to user-governed clearing agencies the question of how to allocate losses associated with non-custodial, data processing, clearing agency functions, and has approved clearing agency services embodying a gross negligence standard of care.[63] The Commission believes that a gross negligence standard of care may be appropriate for certain non-custodial functions that, consistent with minimizing risk mutualization, clearing agency members, through their Board of Directors, determine to allocate to individual service users.

D. Other Determinations

1. Capacity to Comply with the Act and to Enforce Compliance by Members and Participants

a. *ISCC Compliance with the Act.* Section 27A(b)(3)(A) of the Act requires that ISCC have the capacity to comply with the provisions of the Act and the rules and regulations thereunder. Commission rules require ISCC to keep and preserve certain records,[64] obtain and retain fingerprints from personnel,[65] and register and participate in the Commission's Lost and Stolen Securities Program (Program) in compliance with Rule 17f–1 under the Act.[66] The

[54] In addition, according to ISCC's rules, settlement is not final until settlement payment is made. ISCC maintains a lien on all property placed in its possession by participants, including securities and cash. Thus, ISCC may take the securities on which it has a lien into its own accounts to cover the unpaid obligations. In addition, book-entries are subject to reclamation, reversal, or similar adjustment, at ISCC's discretion.

[55] ISCC Rule 4. ISCC Rule 4, section 4 authorizes the Board of Directors to elect to apply the clearing fund to satisfy such obligations before it applies retained earnings to satisfy such obligations.

[56] Upon applying members' clearing fund deposits to satisfy an obligation, ISCC may demand that members then deposit into the clearing fund amounts necessary to eliminate the resulting deficiency in their required clearing fund deposits. If an ISCC member gives proper notice of its determination to terminate business with ISCC, the member is obligated for the *pro rata* charge, but that obligation is limited to the amount of its required clearing fund deposit as fixed immediately prior to the time of the *pro rata* charge.

[57] Rules 8c–1 and 15c2–1 under the Act prohibit the hypothecation of customer securities under circumstances that permit the commingling of customers' securities, without the customers' written consent.

[58] ISCC Rule 18.

[59] *See* Full Registration Order, *supra* note 5, 48 FR at 45179. In that order, the Commission stated that, as a limited purpose trust company, DTC is responsible under state or federal law, or both, to protect each participant's securities and funds.

[60] The standard of care for each outbound link will be determined by each link agreement. These standards may differ because the custodial functions will be performed outside the U.S., and the law of the country in which the custodial services will be performed will apply. The Commission believes that if international links are to develop to support global trading, a uniform standard of care for the custody of securities should be developed.

[61] The Commission believes that, rather than promulgate a specific standard of care for non-custodial functions, the preferable approach is for the clearing agency and its participants to establish their own standard because a standard of care represents an allocation of rights and liabilities between a clearing agency and its participants.

[62] *See, e.g.*, Full Registration Order, *supra* note 5, 48 FR at 45179 and Securities Exchange Act Release No. 22940 (February 24, 1986), 51 FR 7169.

[63] *Id.*

[64] Rule 17a–1 requires a registered clearing agency to keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records it shall make or receive in the course of its business.

[65] Rule 17f–2 requires a registered clearing agency to require that each of its partners, directors, officers, and employees be fingerprinted, unless they do not regularly have access to, or do not supervise those who have access to, the keeping, handling, or processing of securities, money, or the original books and records relating to the securities or money.

[66] Rule 17f–1 requires a registered clearing agency to register and participate in the Lost and Stolen Securities Program ("Program"). Under the Program, a registrant is required to report the discovery of a theft or loss of a security to the Program's data base, and to inquire of the data base with respect to securities that come into its possession whether the securities have been reported lost, missing, stolen, or counterfeit.

Commission believes that ISCC and its facilities manager, NSCC, have the capacity to maintain records in accordance with the Commission's requirements. The Commission also believes that ISCC and NSCC have the capacity to obtain and process fingerprints for appropriate personnel.

With respect to Rule 17f–1, the Commission has determined that ISCC is required to comply with Rule 17f–1 by participating in the Lost and Stolen Securities Program on its own behalf and on behalf of foreign financial institutions with whom ISCC is linked. The reporting and inquiry responsibilities under Rule 17f–1 should be undertaken by the registered clearing agency that sponsors a foreign financial institution into the U.S. national clearance and settlement system.

Rule 17f–1 was developed pursuant to section 17(f)(1) under the Act. Section 17(f)(1) was adopted following a series of Congressional hearings and a Securities and Exchange Commission study about problems with trafficking in lost, stolen, missing, and counterfeit securities.[67] One recognized benefit of that section is its potential to decrease the likelihood that securities firms will bear a financial loss as a result of giving value for securities that are worthless. Rule 17f–1 sets forth an enumerated category of "reporting institutions" that must report instances of loss, theft and counterfeiting of securities to a central data base maintained for the Securities and Exchange Commission ("Commission") by its designee and that must inquire of the data base whether securities coming into their possession have been reported to the data base as lost, stolen or counterfeit. Among the enumerated "reporting institutions" required to comply with the rule are registered clearing agencies and participants therein.[68]

As a registered clearing agency, ISCC intends to form linkages with foreign financial institutions to support more efficient clearance and settlement of international securities transactions. Some of the linkages require that foreign financial institutions become participants in ISCC.[69] Thus, these foreign financial institutions, as participants in ISCC, would become "reporting institutions" with reporting and inquiry obligations under Rule 17f–1.

Compliance with Rule 17f–1 may pose difficulties for a foreign financial institution with access to ISCC services and for members of such a foreign financial institution. For example, a member of a foreign financial institution might be authorized to submit securities certificates directly to ISCC for deposit to the foreign financial institution's account. In that case, the foreign financial institution may not have access to the securities to enable an inquiry in compliance with Rule 17f–1.[70] ISCC, however, can be expected to have access to the certificates and to make an inquiry upon receipt.

The deterrence benefit and the benefit of protection from giving value for worthless securities derived from Rule 17f–1 remain important even when U.S. securities are physically handled outside the U.S. To ignore Rule 17f–1 in these circumstances would be to encourage the trafficking in lost, stolen or counterfeit U.S. securities outside the boundaries of the U.S.

Accordingly, in the context of an international linkage sponsored by a registered clearing agency, the Commission believes it is appropriate for the clearing agency to assume the functions of the foreign financial institution/reporting institution for purposes of Rule 17f–1. The Commission will deem the foreign financial institution/reporting institution to be in compliance with Rule 17f–1 so long as the registered clearing agency performs the obligations that the foreign financial institution/reporting institution otherwise should have performed.

The Commission will look to a clearing agency for compliance with the Rule in these circumstances for a number of reasons. First, because the clearing agency already is a regulated entity that is required to comply with Rule 17f–1, it is familiar with Program procedures and requirements. In addition, the costs of inquiry for a domestic entity are less than they would be for a foreign financial institution, thereby avoiding situations where costs of compliance might outweigh the Rule's benefits. Moreover, a clearing agency having a direct relationship with a foreign financial institution is in a better position than the Commission to know whether the foreign financial institution is complying with the Rule's reporting requirements.

Thus, in addition to its own compliance responsibilities under Rule 27f–1, the registered clearing agency must report instances of loss, theft, and counterfeiting with respect to U.S. securities certificates in the custody or control of the foreign entity. The clearing agency is responsible for notifying all foreign entities that have access to the clearing agency's services that the foreign entity must report all instances of loss, theft, and counterfeiting of which it becomes aware to the clearing agency for input into the data base.[71]

ISCC's participation in the Program as outlined here will help to accomplish the Program's goal of deterring trafficking in lost, stolen, and counterfeit securities. Moreover, ISCC's participation will ensure a more complete data base, which will decrease the likelihood that market participants will bear a financial loss as a result of giving value for worthless securities.

Based upon a review of ISCC's rules and procedures, and the facilities management arrangement, and the Commission's continuing experience with ISCC's operations covered by the no-action letters and with NSCC as a registered clearing agency, the Commission believes that ISCC has the capacity to comply with the Act and its rules and regulations.

b. *ISCC Enforcement of Member Compliance.* Section 17A(b)(3)(A) of the Act envisions clearing agency registration only upon a determination by the Commission that the clearing agency has the capacity to enforce participant compliance with its rules. The Standards Release noted in this context that a clearing agency's organization and capacity to enforce compliance are determined by evaluating its procedures for determining whether a participant is

[67] Organized Crime—Stolen Securities, Hearings Before the Permanent Subcommittee on Investigations, Senate Committee on Government Operations, 92nd Cong., 2d Sess. (1974). *See also* Study of Unsafe and Unsound Practices of Broker-Dealers, Report and Recommendation of the Securities and Exchange Commission (pursuant to section 11(h) of the Securities Investor Protection Act of 1970), December 1970.

[68] Other reporting institutions include national securities exchanges, members thereof, national securities associations, broker, dealers, municipal securities dealers, government securities brokers and dealers, registered transfer agents, federally-insured banks, and members of the Federal Reserve System.

[69] Section 3(a)(24) of the Act defines a participant of a clearing agency.

[70] In addition, because of their geographical location, foreign financial institutions would incur high costs of compliance with the Rule, as inquiries are made by telephone, telex, or mail. Further, inquiries through the international mails may be subject to delays. The longer an inquiry takes, the more likely it is that a firm already has given value; thus, the benefits of Rule 17f–1 are reduced.

[71] In addition, when securities certificates come into the clearing agency's custody or control, however temporarily, from a foreign entity, the clearing agency must inquire about the status of those certificates, and may not rely on Rule 17f–1(d)(1)(ii), which permits an exemption from inquiry when the securities certificates are received from another reporting institution where the reporting institution is a foreign financial institution. Of course, if any other inquiry exemption applies in the circumstances, the clearing agency may rely upon that exemption and not inquire.

experiencing financial or operational difficulties, its arrangements for exchanging information with other self-regulatory organizations ("SROs"), and the adequacy of its examining staff to enforce compliance by participants with the clearing agency's rules.[72] For example, a clearing agency may monitor participants' outstanding fails-to-receive and fails-to-deliver to determine each participants' continuing financial condition and ability to make payments when due. As another example, a clearing agency may monitor participants' operations for compliance with its procedures for maintaining office personnel or meeting processing cut-off times or other requirements. The Commission is satisfied that ISCC has developed and will continue to develop procedures for monitoring participants' financial and operational condition.

ISCC relies on its own staff and that of its facilities manager, NSCC, to enforce compliance. Staff at NSCC have more than ten years experience operating NSCC's procedures for monitoring participants. The Commission is satisfied that such experienced staff will ensure that ISCC's procedures comply with the Act and the Standards Release.

ISCC has procedures in place for sharing information with NSCC and DTC on inbound links.[73] Because ISCC has links with foreign financial institutions for clearance and settlement at those institutions, the Commission believes ISCC (and other clearing agencies with international links) should work with linked foreign financial institutions to make arrangements for sharing information upon request about the financial and operational condition of joint members or affiliates.

Under the Act, a clearing agency also must have the authority and ability to discipline members that violate its rules through appropriate sanctions for such violations, and must provide fair procedures for the imposition of such sanctions.[74] ISCC's rules contain disciplinary procedures to enforce compliance with its rules.[75] Under ISCC's rules, ISCC may impose a fine of up to $5,000 for each violation of ISCC's rules or procedures and may also expel, suspend, censure, limit, or restrict the activities, functions, or operations of, any member which violates ISCC's rules or procedures or may develop another sanction which appropriately addresses the violation.[76]

ISCC's rules provide that before ISCC will impose any disciplinary sanction other than summary suspension against a member, it will notify the member of the charges against it, and of the member's right to a hearing to ensure that members are offered the opportunity to explain their actions before sanctions are determined, and that sanctions are fairly imposed. When ISCC summarily suspends, or summarily limits or prohibits a member's access to ISCC services, the member is not guaranteed the opportunity to a hearing prior to the imposition of a sanction. Such a member will be provided with a written statement of the grounds for the decision and will be notified of its right to request a hearing after the sanction has been imposed. ISCC's rules authorize its Membership Committee to impose summary sanctions against a member whose actions fall within the grounds specified in ISCC Rule 46.[77] Under the Act, the affected member may appeal final clearing agency decisions to the Commission. The Commission believes that these procedures for disciplining members fulfill the requirements of the Act.

2. Fair Representation

Section 17A(b)[3][C] requires that a clearing agency's rules assure fair representation to its participants and shareholders in the selection of its directors and administration of its affairs. The Commission has interpreted the fair representation standard to require clearing agency rules that are designed to facilitate continuing fair representation of a clearing agency's participants and shareholders.[78]

As discussed below, the Commission is temporarily exempting ISCC from compliance with Section 17A(b)(3)(C) of the Act. ISCC's By-Laws and Shareholder Agreement set forth the provisions establishing the number and composition of the Board of Directors as well as the procedures for the election of Directors. The Shareholder Agreement provides that ISCC's Board of Directors will be composed of both management and participant directors.

ISCC's Board is authorized for a maximum of 22 members [79] and is composed of four classes with staggered terms to ensure that new directors are elected each year. Members of Class I, Class II, and Class III are elected to three year terms and members of Class IV are elected to one year terms. Classes I through III each shall consist of four directors, who shall be general partners or officers of participants ("Participant Directors"). Class IV shall consist of ten directors, eight of whom shall be nominees of NSCC ("Shareholder Directors"), another of whom shall be the President of ISCC, and another of whom shall be another officer of ISCC (the "Management Directors"). NSCC may designate one of the eight Shareholder Directors for election by the Board of Directors of ISCC as Vice-Chairman of ISCC, unless the Board of Directors determines that another director shall hold such office.[80]

Individuals are nominated to serve on the Board of Directors either by the Nominating Committee or by participant petition. A Nominating Committee will

[72] Section 17(d)(1) of the Act and Rule 17d-2 thereunder provide for some relief from regulatory responsibilities. Thus, clearing agencies (or any SROs) may file for Commission approval plans allocating specified self-regulatory responsibilities among themselves regarding joint members. To date, no clearing agency has filed such a plan.

[73] In 1984, clearing agencies and other SROs established formal procedures for communications whenever a joint member's financial condition threatens the financial or operational condition of member firms, clearing agencies, or marketplaces. Recently, clearing agencies, including NSCC and DTC, agreed to strengthen the 1984 procedures by cooperating in the Securities Coordination Group to identify participants whose financial or operational condition poses risks and to share information about joint members. As facilities manager for ISCC, NSCC will act on behalf of ISCC in these matters.

[74] *See* section 17A(b)(3) (G) and (H) of the Act.

[75] ISCC Rule 48. Section 19(d) of the Act requires a registered clearing agency to provide notice of final disciplinary action to the appropriate regulatory agency for the clearing agency and (if other than the appropriate regulatory agency for the clearing agency) the appropriate regulatory agency for the participant or applicant.

[76] Provisions for enforcing compliance by participants that are foreign financial institutions are contained in the link agreements, and vary from link to link. As a general matter, ISCC enforces compliance with its rules or with the link agreements through the ability to declare a breach of contract, and therefore to stop performance of link obligations.

[77] Section 17A(b)(5)(c) of the Act states that a clearing corporation may impose summary action against a participant if he (1) has been expelled or suspended from any SRO; (2) is in default of any delivery of funds or securities to the clearing agency; or (3) is in such financial or operating difficulty that the clearing corporation determines that such action is necessary for the protection of the clearing corporation, its participants, its creditors or investors. ISCC's Rule 46 authorizes ISCC to impose summary sanctions in accordance with the above standards.

[78] The Act does not define fair representation or set up particular standards of representation. Instead, it provides that the Commission must determine whether the rules of the clearing agency regarding the manner in which decisions are made give fair voice to participants as well as to shareholders in the selection of directors and the administration of its affairs. With respect to providing participants with a meaningful opportunity to be represented in the selection of the board of directors and the administration of the clearing agency's affairs, the Standards counsel that each clearing agency's procedures be evaluated on a case-by-case basis. *See* Standards Release, *supra* note 11, 45 FR at 41923.

[79] ISCC Bylaws, Article II, section 2.1.

[80] ISCC Shareholder Agreement, section 2.

nominate candidates for the Board.[81] The Nominating Committee will be divided into two classes to provide for the staggering of the terms of Committee members so that new members will be seated on the Nominating Committee each year. Participants may nominate directly individuals for seats on either the Board of Directors or on the Nominating Committee by submitting to ISCC's Corporate Secretary a nominating petition signed by the lesser of 5% of the number of participants or 15 participants.

Upon the submission of a slate of candidates by the Nominating Committee, NSCC, as sole shareholder, shall elect those candidates to be the participant directors. If a participant submits a nomination for a participant director, ISCC's Secretary shall mail ballots to participants listing the names of all candidates, and participants may vote on the candidates.[82] NSCC has agreed to vote its shares to elect as participant directors those candidates who receive the highest number of votes.[83]

ISCC has requested an exemption from section 17A(b)(3)(C) of the Act to permit NSCC to retain voting control on ISCC's Board of Directors until the earlier of: (1) the time ISCC has 25 active participants; or (2) 1992.[84] Currently, ISCC has 12 participants, including two foreign financial institutions. Of these, only 4 participant members are active users of the ISCC/ISE link, ISCC's most active link. ISCC therefore does not believe that it currently has a meaningful participant base.

The Commission agrees that ISCC does not yet have a meaningful participant base that requires the protections of the fair representation provisions of the Act. If only a small number of participants were able to use the provisions for nomination of Board of Directors and Nominating Committee members, each participant may have inordinate, and unintended control of the nominations and voting. Moreover, NSCC has a substantial interest in controlling ISCC's Board of Directors in the present circumstances because of the financial risk NSCC faces on ISCC's behalf. As part of the ISCC/ISE agreement, NSCC has guaranteed ISCC's obligations to ISE arising out of that link. The ISCC clearing fund, composed of contributions from members based on use of ISCC services, currently is the only source of funds ISCC has to meet those obligations. Until ISCC has a greater number of participants actively using its services and contributing to the clearing fund, the clearing fund will remain at a minimal level and not serve as a substantial buffer to NSCC. Thus, until an effective buffer in the form of a more substantial clearing fund or other measure is adopted, NSCC has an interest in continuing to exercise appropriate control over ISCC and its affairs.

The Commission has determined to exempt ISCC from section 17A(b)(3)(C) of the Act, and thus to permit ISCC and NSCC to waive the participant nomination and voting provisions in the Shareholder Agreement, for a period of 18 months, which is the duration of ISCC's temporary registration.[85]

The Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

The Commission will review the need for the exemption within the 18-month period. In addition, should the number of ISCC active participants or the amount of ISCC's clearing fund materially change before the end of the 18 month period, the Commission, by order, may modify or terminate the exemption within the 18 month period.

3. Competition

Section 17A of the Act directs the Commission to have due regard for the maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents. Section 17A(b)(3)(1) provides that a clearing agency's rules do not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act. As discussed below, the Commission believes that ISCC's rules and its registration as a clearing agency will not impose any inappropriate burdens on competition.

The Commission believes that ISCC's services can make efficient, automated processing available to a wide universe of institutions by decreasing the need for each institution to develop its own in-house, decentralized processing systems and reducing personnel and other expenses associated with transaction processing. ISCC's rules permit a wide range of financial institutions to apply for membership.

The Commission believes that ISCC's registration will not result in any inappropriate burdens on competition on banks or other entities providing clearing services. Institutions conducting trades in foreign securities may continue to use the methods they used prior to ISCC's establishment to clear and settle these trades.

4. Fees

Section 17A(b)(3)(D) of the Act requires a clearing agency's rules to allocate equitably among participants reasonable fees, dues, and other charges. Section 17A(b)(3)(E) also provides that clearing agency rules not impose any schedule of prices, or fix rates, for services rendered by participants. The Commission's staff has reviewed ISCC's fee schedule and found each service fee to be allocated equitably among participants using that service. Moreover, ISCC's rules do not in any manner impose prices or fix rates for services provided by its participants. Accordingly, the Commission believes that ISCC's rules and fees are consistent with the above statutory standards.

V. Conclusions and Determinations

The Commission has reviewed ISCC's application for registration as a clearing agency pursuant to Sections 17A(b)(3)(A),(B), and (D) through (I) and 19(a)(1) of the Act and ISCC's request for exemption from section 17A(b)(3)(C) of the Act pursuant to Rule 17Ab2–1 thereunder. After reviewing ISCC's application for registration, the Commission has determined that ISCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard funds in its custody or control or for which it is

[81] Section 2A(ii) of the Shareholder Agreement states that the members of the Nominating Committee for the years 1987, 1988, and 1989 shall be the members of the Board of its parent corporation, NSCC. A new Nominating Committee will be constituted immediately following each annual meeting. Beginning in 1990 (and continuing throughout all succeeding years) the Nominating Committee shall be composed of seven members, divided into two classes. The initial members of Class I will serve for one year and the initial members of Class II will serve for two years. After the initial members of Class I have been replaced, all subsequent members will serve two year terms.

[82] A participant's voting rights are determined in accordance with a formula based on ISCC usage. This formula states that each participant shall be entitled to the total of one vote for each ten dollars of average monthly fee payable or paid, by the participant to ISCC during the twelve month period ending on the last day of the second month prior to the date of determination by ISCC of the number of votes to which each participant is entitled, multiplied by the number of persons to be elected Participant Directors.

[83] ISCC Shareholder Agreement, section 2.

[84] *See* letter from Robert J. Woldow, Executive Vice President and General Counsel, NSCC, to Jonathan Kallman, Assistant Director, SEC, undated, received March 30, 1989.

[85] ISCC has represented that notwithstanding the exemption, Participant Directors at all times will comprise at least 40% of the ISCC Board of Directors. *See* letter from Karen L. Saperstein, Associate General Counsel, ISCC, to Sandy Sciole, Special Counsel, SEC, dated May 9, 1989.

responsible; to comply with the provisions of the Act and the rules and regulations thereunder; to enforce compliance by its participants with the rules of the clearing agency; and to carry out the purposes of section 17A.

The Commission also has determined that, in accordance with section 17A(b)(3)(F) of the Act, the ISCC rules are designed to promote prompt and accurate clearance and settlement of securities transactions; to assure the safeguarding of securities and funds which are in the custody or control of ISCC or for which it is responsible; to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions; to prevent unfair discrimination in the admission of participants or among participants in the use of ISCC; and, in general, to protect investors and the public interest. In addition, the Commission has determined that ISCC's rules provide for the equitable allocation of reasonable dues, fees and other charges among its participants; do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants; provide for appropriate discipline of participants for violation of any provision of ISCC's rules by expulsion, suspension, limitation of activities, functions and operations, fines, censure, or any other fitting sanction; provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by ISCC of any person with respect to access to services offered by the clearing agency; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

With regard to ISCC's request for a temporary exemption from section 17A(b)(3)(C) of the Act, the Commission believes it is appropriate to temporarily exempt ISCC from the fair representation requirements as embodied in the provision for direct participant nomination of Board of Directors candidates found in ISCC's Shareholder Agreement with NSCC. The Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of section 17A. The Commission reserves the right to modify, by order (including such orders as the Commission may issue under section 19(b) of the Act), the terms and scope of the exemption from the fair representation requirements, if it determines such modification is appropriate for the protection of investors or in the public interest.

It is therefore ordered, Pursuant to sections 17A(b)(2) and 19(a) of the Act, that ISCC's temporary registration be, and it hereby is, granted for a period of 18 months, and that ISCC is hereby granted an exemption from the fair representation standard in section 17A(b)(3)(C) of the Act, to be effective for a period not to exceed 18 months.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: May 12, 1989.

[FR Doc. 89-12011 Filed 5-18-89; 8:45 am]

BILLING CODE 8010-01-M

[34-26817 GSCC-89-07]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Filing of Proposed Rule Change

May 12, 1989.

In the matter of: (1) Amendments to Government Securities Clearing Corporation's ("GSCC") Rule 1 (Definitions), and (2) adoption of new Rules 11 (Netting System), 12 (Securities Settlement), and 13 (Funds-Only Settlement).

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1989, GSCC 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 GSCC. The Commission is publishing this notice to solicit comments on the proposed rules changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms and Substance of the Proposed Rules Changes

The proposed rules changes would modify GSCC's Rules as stated in Section IIA below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rules changes and discussed any comments it received on the proposed rules changes. The text of these statements may be examined at the places specified in Item IV below. GSCC 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 Rules Changes

(a) The purpose of the proposed rules changes is, in conjunction with other rules changes pending Commission approval, to establish the legal framework for the Netting System that GSCC proposes to implement to provide a netting service for certain of its Members.

New Rule 11 (Netting System) provides for the establishment of a Netting System for aggregating and matching offsetting obligations resulting from trades made by Neeting Members in eligible netting securities, which trades: (1) Have been compared, (2) have not been settled, (3) have not previously failed to settle, and (4) have not been excluded by GSCC from the net. Each business day, GSCC will calculate and report to Netting Members each net settlement position that they have in an eligibile netting security, including net settlement positions that are open after having failed to settle on a previous business day; for each such position, the member is either obligated to deliver securities to GSCC or is obligated to receive securities from GSCC (alternatively, the member may have a flat position).

The establishment of net settlement positions for trades of a Netting Member in eligible netting securities will be done by GSCC by calculating the difference between the par value amounts of each purchase and sale of an eligible security. Resulting Netting Member deliver and receive obligations to and from GSCC will be allocated by GSCC on a random basis to Netting Members with corresponding receive and deliver obligations.

The obligation of a Netting Member to deliver or receive securities will be fixed at the time that GSCC makes available its report detailing netted positions; at that time, all deliver and receive obligations, and related payment obligations, that were created by the Member's netted trades are terminated and replaced by deliver, recieve, and payment obligations to GSCC as created by the net. Every delivery and receipt by a Netting Member to and from GSCC will be done against simultaneous payment at a uniform System price established by GSCC each business day for each eligible netting security; accrued interest from the contractual settlement date to the acutal settlement

date will be encompassed in the settlement price.

Absent a situation involving the insolvency of a Netting Member, GSCC will not be obligated to deliver to a Netting Member securities that have not yet been delivered to it; its obligation to re-deliver such securities to a receiving Member will not arise until a sufficient number of like securities have been delivered to it. Fails will not be netted with other fails or with new trades; rather, they will be maintained on an independent basis until settled.

New Rule 12 (Securities Settlement) provides that securities deliveries and receipts by GSCC and by Netting Members must be made through clearing banks designated by each that have access to FedWire. Netting Members will be obligated to appropriately instruct their clearing banks to make securities movements on their behalf, and the Members will be responsible for any failure of their clearing bank to act appropriately on their behalf as regards settlement of netted positions.

If GSCC incurs costs as the result of having to finance a securities position, such costs will be shared on a equal basis by all Netting Members; however, if the Board finds that a Member has frequently caused GSCC to incur financing costs, without good cause, such Member may be obligated to assume the entire amount of any costs to GSCC that are caused by its deliveries. Partial deliveries may be accepted by GSCC, but only if the receiving Member consents to an equivalent partial delivery to it. A Netting Member must accept from GSCC at the appropriate price all securities deliveries to it; if it fails to do so, it will be obligated to pay for all resultant costs to GSCC. GSCC will have no obligation to accept securities improperly delivered to it, and a Member making an improper delivery to GSCC will be obligated to pay for any costs incurred by GSCC as a result thereof.

New Rule 13 (Funds-Only Settlement) provides that, on each business day, each Netting Member shall either pay to GSCC or collect from GSCC a net total funds-only settlement amount comprised of the following components (all but one of which—fees owing to GSCC—may, on any particular business day, be either a credit or a debit amount for the Member): (1) With regard to every net settlement position, a mark-to-market adjustment that includes accrued interest, (2) with regard to fail net settlement positions that have remained open on a coupon payment date or on a maturity date for the underlying securities, a coupon adjustment payment and a redemption adjustment payment, respectively, (3) with regard to any settlement made at other than the appropriate System value, a clearance difference amount, (4) adjustments to a Netting Member's cash deposits to the Clearing Fund or other cash collateral, (5) fee amounts owing to GSCC, and (6) other miscellaneous adjustments. An exception is provided for Netting Members that are Inter-Dealer Brokers; they are not obligated to make mark-to-market payments or coupon adjustment payments (and are not entitled to collect such payments) until there occurs settlement of the net settlement positions from which these adjustments arise.

All payments and collections of funds-only settlement amounts must be done through depository institutions acting on behalf of Netting Members and GSCC. If a Netting Member is obligated to make payment of a funds-only settlement amount to GSCC on a business day, it must do so by 10:00 a.m. on such day; GSCC must make payment of funds-only settlement amounts owing to Netting Members on a particular business day by 11:00 a.m. on such day. The obligation of GSCC to pay a funds-only settlement amount to a Netting Member is not contingent upon the collection by GSCC of any funds-only settlement amounts from any Member.

(b) The proposed rules changes will promote the prompt and accurate clearance and settlement of securities transactions for which GSCC is responsible and are, therefore, consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rules changes will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rules changes have not yet been solicited from all Members. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rules Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File Number SR–GSCC–89–7 and should be submitted by June 9, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority

Jonathan G. Katz,

Secretary.

[FR Doc. 89–12012 Filed 5–18–89; 8:45 am]

BILLING CODE 8010–01–M

[34–26816, GSCC–89–4]

Self-Regulatory Organization; Filing of Proposed Rule Change by Government Securities Clearing Corp.

May 12, 1989.

In the matter of (1) amendments to Government Securities Clearing Corporation's ("GSCC") Rule 1 (Definitions) and Rule 2 (Members), and (2) adoption of

Rule 15 (Financial Responsibility and Operational Capability Standards).

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1989, GSCC 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 GSCC. The Commission is publishing this notice to solicit comments on the proposed rules changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms and Substance of the Proposed Rules Changes

The proposed rules changes would modify GSCC's Rules as stated in section II A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rules changes and discussed any comments it received on the proposed rules changes. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (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

(a) The purpose of the proposed rules changes is, in conjunction with other rules changes that will be filed for Commission approval in the near future, to establish the legal framework for the Netting System that GSCC plans to implement to provide a netting service for certain of its members.

Current Rule 2 (Members) would be revised to establish three distinct categories of members: members of the Comparison System (defined as "Comparison-Only Members"), members of both the Comparison System and the Netting System (defined as "Netting Members"), and Clearing Agent Bank Members. A person would qualify to apply to become a Comparison-Only Member if it is (1) A broker or dealer that has registered or given notice under the Government Securities Act of 1986, (2) a clearing agent bank that is obligated to GSCC on behalf of a non-member, or (3) any other entity that demonstrates to the Board that its business and capabilities are such that it could reasonably expect material benefit from direct access to GSCC's services.

A person would qualify to apply to become a Netting Member if it satisfied the requirements of either category (1) or category (2) above and, at the time of becoming a member of the Netting System, it will have been a Comparison-Only Member for at least six months, unless this requirement is waived by the GSCC Board. Any clearing agent bank—defined to mean a member of the Federal Reserve System that is regularly engaged in the business of providing Government securities clearance services to GSCC members and that will, upon GSCC's request and under mutually agreeable terms, provide clearing services to GSCC—is eligible to apply to become a Clearing Agent Bank Member. Only Comparison-Only and Netting Members would be entitled to participate in the Comparison System service, and only Netting Members would be entitled to participate in the Netting System service.

The proposed revisions to Rule 2 further provide that an application to become any type of member would first be reviewed by the Membership and Standards Committee, which would recommend approval or disapproval of the application to the full GSCC Board. The Board would approve a membership application only upon a determination that the applicant meets the standards of financial responsibility and operational capability set forth in the new Rule 15. Comparison-Only Members and Netting Members would be required to give at least ten days' written notice to GSCC before electing to terminate their membership.

New Rule 15 (Financial Responsibility and Operational Capability Standards) provides identical financial responsibility and operational capability standards for applicants to become Comparison-Only Members and Clearing Agent Bank Members. Such applicants must: (1) Have satisfactory operational capability, personnel, accounting systems, and internal procedures to sufficiently handle transactions and communicate with GSCC as may be required, (2) be able to make any anticipated fee payments, (3) be in compliance with the minimum capital requirements of their designated examining authority or appropriate regulatory agency, (4) not be subject to an order of statutory disqualification or an order of similar effect issued by a banking authority, and (5) not have triggered one or more disqualification criteria—including the applicant being subject to a condition that would require it to be placed on surveillance status if it were already a member (The conditions under which a member will be placed on surveillance status by GSCC will be set forth in GSCC Rule 4 (Clearing Fund and Loss Allocation), which will be filed with the Commission for its approval in the near future). Admission to become a Netting Member would require a Board determination that the applicant: (1) Continues to meet the requirements for admission as a Comparison-Only Member, (2) will have sufficient financial ability to make anticipated required deposits to GSCC's Clearing Fund in a timely manner, (3) satisfies certain minimum capital requirements, and (4) has an established, profitable business history of at least six months.

Rules 2 and 15 provide the Board with discretion, in applying these standards, to impose greater requirements, to determine that one or more of such standards as applied to a particular applicant is unduly or disproportionately severe, or to determine that GSCC does not, at the time of consideration of the application, have adequate capability to admit the applicant.

Rule 15 provides that an existing member must maintain certain "continuance" standards, including maintaining the relevant standards and qualifications for admission to membership and not violating any GSCC rule or procedure.

With regard to Rule 1 (Definitions), various definitions have been revised or added to take into account the revisions to current Rule 2 and the addition of Rule 15.

(b) The proposed rules changes will promote the prompt and accurate clearance and settlement of securities transactions for which GSCC is responsible and are, therefore, consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rules changes will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rules

changes have been solicited from all Members; no written comments have been received to date. Members will be notified of the rule filing, and comments will again be solicited, by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR–GSCC–89–4 and should be submitted by June 9, 1989.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.

Jonathan C. Katz,

Secretary.

[FR Doc. 89–12013 Filed 5–18–89; 8:45 am]

BILLING CODE 8010–01–M

[34–26819, GSCC–89–6]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Government Securities Clearing Corp. Relating to Ceasing To Act for a Member and Insolvency of a Member

May 15, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 5, 1989, GSCC filed with the Securities and Exchange Commission the proposed rules changes as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rules changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms and Substance of the Proposed Rules Changes

The proposed rules changes would modify GSCC's Rules as stated in section II A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (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.

(a) The purpose of the proposed rule changes is, in conjunction with other rule changes that are either pending before the Commission or that will be filed for Commission approval in the near future, to establish the legal framework for the Netting System that GSCC plans to implement to provide a netting service for certain of its members.

New Rules 18 (Ceasing to Act for a Member) and 20 (Insolvency of a Member) provide for GSCC's ceasing to act for a member in varying manners and under differing circumstances.

Pursuant to Rule 18, upon provision of notice, GSCC may cease to act for a member, either generally or with respect to a particular transaction or transactions, if the GSCC Board determines that one or more specified factors exist and that such action is appropriate to protect GSCC or another member or to facilitate an orderly settlement process. In particular, GSCC may cease to act for a member if: (1) The member has failed to perform an obligation to GSCC or has materially violated a GSCC rule or procedure or agreement with GSCC; (2) the member has failed to make a required payment to GSCC on a timely basis; (3) the member no longer is in compliance with the admission standards that would be applicable to it if it were an applicant; (4) the member has engaged in any one of several specified types of misconduct; (5) the member is in or is approaching significant financial difficulty; or (6) the GSCC Board has reasonable grounds to believe that ceasing to act is necessary to protect GSCC or other members or to facilitate the orderly performance of GSCC's services. The Board retains discretion to continue to act for a member if it determines that continuing to act is in GSCC's best interests.

Upon ceasing to act for a member, GSCC will promptly notify such member and all other members of the nature of its action and how pending matters and transactions involving that member will be affected. GSCC will thereafter decline to accept or process data with regard to any transaction to which that member is a party, unless the Board determines otherwise in order to promote an orderly settlement process.

Rule 20 governs the insolvency of a member. A member will be treated as insolvent if: (1) The member notifies GSCC that it is insolvent or unable to perform any of its material obligations, contracts, or agreements; (2) the member is determined to be insolvent by the Board, a court, or any appropriate examining or supervisory authority or self-regulatory organization; (3) the member files for reorganization or relief under the Bankruptcy Code or other law for the appointment of a receiver, custodian, liquidator, trustee, or similar legal representative; or (4) there occurs any of a number of specified court actions related to the reorganization, liquidation, or dissolution of the member. Each member has an affirmative obligation to notify GSCC of its insolvency; a member, by submitting to GSCC data regarding its trades, will be deemed to represent and warrant that it is not insolvent.

As soon as practicable after it determines that an event of insolvency has occurred, GSCC will notify all members of the treatment of a member as insolvent, and how pending matters involving that member will be affected.

Upon a determination that a member is to be treated as insolvent: (1) If there is data in the Comparison System regarding trades of the insolvent member that have not been compared, such data will be deleted from the Comparison System, (2) if there is compared data regarding trades of the insolvent member that have not yet been included in the net, such data will not be eligible for netting, unless otherwise determined by the GSCC Board in order to promote an orderly settlement process, and (3) if there are outstanding net settlement positions of the member, they will be closed out after GSCC has netted them (inclusive of failed positions) to a final net settlement position for each security. This close-out procedure will be done promptly unless the Board determines that the immediate close out of positions in security might promote a disorderly market in that security.

(b) The proposed rule changes will promote the prompt and accurate clearance and settlement of securities transactions for which GSCC is responsible and are, therefore, consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rules changes will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rules changes have not yet been solicited from members. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File number SR–GSCC–89–6 and should be sumbitted by June 9, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–12072 Filed 5–18–89; 8:45 am]

BILLING CODE 8010–01–M

[34–26820; GSCC–89–5]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Government Securities Clearing Corp. Relating to Definitions and Clearing Fund and Loss Allocation

May 15, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 5, 1989, GSCC filed with the Securities and Exchange Commission the proposed rules changes as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rules changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms and Substance of the Proposed Rules Changes.

The proposed rules changes would modify GSCC's Rules as stated in Section II A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rules changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (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

(a) The purpose of the proposed rule change is, in conjunction with other rule changes that are either pending before the Commission or that will be filed for Commission approval in the near future, to establish the legal framework for the Netting System that GSCC plans to implement to provide a netting service for certain of its members.

New Rule 4 provides for the establishment by GSCC of a Clearing Fund, to which each Netting Member (except Inter-Dealer Broker Netting Members, which engage only in brokered transactions) would contribute a minimum required amount (the "Required Fund Deposit"). The greater of $100,000 or 10 percent of each Netting Member's Required Fund Deposit must be in cash, up to a maximum cash requirement of $500,000. The amount of the Required Fund Deposit would be caluclated based on a formula that measures risk exposure to GSCC arising from the member's securities settlement activity and its funds-only settlement activity. The total requirement could be increased if such member has been placed by GSCC on surveillance status as the result of the Member experiencing an event or condition that could materially affect its financial or operational capability. Inter-Dealer Brokers would have no Clearing Fund deposit obligation; however, they would be required to deposit $100,000 in cash plus an additional $1.5 million, which may be in the form of eligible Treasury securities or letters of credit deposited as collateral for any potential liability.

A Netting Member's obligation to contribute to the Clearing Fund may be met by cash or, except for the minimum cash requirement, by an open account indebtedness fully collateralized by Treasury securities with a remaining maturity of one year or less (or other Treasury securities as may be approved by the GSCC Board) or letters of credit in an approved form and issued by an approved bank. Letters of credit may constitute no more than 70 percent of the Required Fund Deposit of a member; no letters of credit from an affiliate of a member will be accepted from that member. No more than 20 percent of all letters of credit in the Fund may be from any one issuing bank, unless the GSCC Board determines a higher amount to be appropriate. No haircut will be taken on Treasury securities (except that, if the GSCC Board determines Treasury securities with a remaining maturity of greater than one year to be acceptable as Clearing Fund collateral, an appropriate haircut will be taken based on the type of security), and a 1 percent haircut will be taken on letters of credit.

The Clearing Fund would be used to cover (1) losses arising from the default of a member, (2) losses arising from clearance and settlement activity other than from a member default, and (3) financing obligations of GSCC incident to its business. If a loss arises from the insolvency of a Netting Member (after the close-out of the insolvent member's position pursuant to Rule 20) that cannot be covered by application of the member's Clearing Fund deposits, to the extent such loss is allocated to direct, non-brokered transactions, the loss will be absorbed fully by all Netting Members, other than Inter-Dealer Brokers, pro rata based on the activity of each such member with the insolvent member for settlement on the day of default. To the extent that such loss is allocated to brokered transactions, 10 percent of such loss will be assessed to Inter-Dealer Brokers as a group, on an equal basis irrespective of activity with the insolvent member, up to a maximum per each such Broker of $1.6 million per calendar year. The balance of any such loss will be allocated to all other Netting Members, pro rata, based on the trading activity of each such member with the insolvent member.

With respect to a loss arising other than from the insolvency of a Netting Member, the retained earnings of GSCC would first be applied, with a minimum of 25 percent being applied. If the application of retained earnings does not eliminate such loss, up to 50 percent of the first $100,000 in cash deposited by each Netting Member would be applied. Any remaining portion of the loss would be satisfied by applying the balance of each Netting Member's Required Fund Deposit (or, with respect to an Inter-Dealer Broker, the collateral it deposits) pro rata, based on the average daily level of such deposit or collateral (with Inter-Dealer Brokers only being liable for a maximum of up to $1.6 million per calendar year per such broker).

For any type of loss, if a member is assessed an amount above its required Fund deposit, it would be able to elect to terminate its membership in GSCC and thereby not be liable for any amount above its required Fund deposit. A member that elects to so terminate its membership would not be eligible to apply for re-admission to membership in the Comparison System or Netting System until it paid to GSCC the amount of unpaid assessment, plus interest on that amount.

(b) The proposed rule changes will promote the prompt and accurate clearance and settlement of securities transactions for which GSCC is responsible and are, therefore, consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rules changes will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on a summary of the proposed rules changes have been solicited from all Members; no written comments have been received to date. Members will be notified of the rule filing, and comments will again be solicited, by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File number SR–GSCC–89–05 and should be submitted by June 9, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–12073 Filed 5–18–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 12, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46289

Date Filed: May 11, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 6, 1989.

Description: Application of Malev Hungarian Airlines pursuant to section 401 of the Act and Subpart Q of the Rules of Practice applies for the issuance of a foreign air carrier permit to engage in foreign air transportation of persons, property and mail between Budapest and the co-terminal points New York, Chicago and Los Angeles.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-12014 Filed 5-18-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Noise Exposure Map Notice; Akron-Canton Regional Airport, North Canton, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Akron-Canton Regional Airport Authority for Akron-Canton Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is April 24, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611.1, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Akron-Canton Regional Airport are in compliance with applicable requirements of Part 150, effective April 24, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatability program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the Akron-Canton Regional Airport Authority. The specific maps under consideration are the noise exposure maps: 1988 Unabated Conditions and 1993 Unabated Conditions following page I-5 in the submission. The FAA has determined that these maps for Akron-Canton Regional Airport are in compliance with applicable requirements. This determination is effective on April 24, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 269, Des Plaines, Illinois 60018

Federal Aviation Administration, Detroit Airports District Office, East Willow Run Airport, 8820 Beck Road, Belleville, Michigan 48111

Akron-Canton Regional Airport Authority, Akron-Canton Regional Airport, 5400 Lauby Road, Box No. 23, North Canton, Ohio 44720.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, on April 24, 1989.

Stanley Rivers,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 89-12058 Filed 5-18-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Spirit of St. Louis Airport, St. Louis County, Chesterfield, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by St. Louis County for the Spirit of St. Louis Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Spirit of St. Louis Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before October 25, 1989.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is April 28, 1989. The public comment periods ends June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Ornes, Federal Aviation Administration, Airports Division, 601 E. 12th St., Kansas City, Missouri 64106, Telephone (816) 426–6614. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Spirit of St. Louis Airport are in compliance with applicable requirements of Part 150, effective April 28, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 25, 1989. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

St. Louis County submitted to the FAA on January 18, 1988 noise exposure maps, descriptions and other documentation which were produced during a Federal Aviation Regulation Part 150 Noise Compatibility Study that began on June 23, 1987. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by St. Louis County. The specific maps under consideration are identified as "Noise Exposure Map, 1987 Unabated Conditions" and "Noise Exposure Map, 1993 Unabated Conditions" in the submission. The FAA has determined that these maps for Spirit of St. Louis Airport are in compliance with applicable requirements. This determination is effective on April 28, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Spirit of St. Louis Airport, also effective on April 28, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 25, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Airports Division, 601 East 12th St., Kansas City, MO 64106

Mr. Richard E. Hrabko, Airport Director, Spirit of St. Louis Airport, P.O. Box 250, Chesterfield, MO 63017.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Kansas City, MO, April 28, 1989.

George A. Hendon,

Manager, Airports Division, ACE–600.

[FR Doc. 89–12059 Filed 5–18–89; 8:45 am]

BILLING CODE 4910–13–M

Airport Study Environmental Impact Statement; Santa Catalina Airport, County of Los Angeles

AGENCY: Federal Avaiation Administration (FAA), DOT.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the procedural provisions of the Council Environmental Quality regulations (40 CFR Parts 1500–1508) implementing the National Environmental Policy Act (NEPA), the Federal Aviation Administration (FAA) gives notice that an environmental impact statement (EIS) is being prepared, in coordination with the County of Los Angeles, for developing a

25-acre commercial service airport or revamp/Upgrade of an existing privately owned airport commercial service at Santa Catalina Island, Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: Thomas J. Conley, Environmental Protection Specialist, AWP-611.3, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1621.

SUPPLEMENTARY INFORMATION: The FAA, in coopreration with the County of Los Angeles, will prepare an EIS for considering upgrading of an existing privately owned airport or developing a new 25-acre commercial service airport on Santa Catalina Island in the County of Los Angeles. The environmental documentation needed pertaining to improvements to the existing Airport-in-the sky ranges from assessment of upgrading the existing facilities to constructing a new 3,240-foot runway with parallel taxiway. Specific improvements associated with the alternatives include approximately 120,000 square feet of paved tie-down parking; small hangars (T-hangers) for 10 aircraft; vehicle parking for autos and buses; airfield lighting; paving circulation/access roads from the city of Avalon to the airport; fixed base operations (FBO) for fueling/maintenance; and other associated minor facility improvements.

The new airport location is proposed at Pebbly Beach. As envisioned, this alternative will include a 2,350-foot-long by 60-foot-wide runway paralleling the coast; a terminal building as associated support structures; vehicle parking for autos and buses; based aircraft parking for approximately 60 aircraft; pave tie-down parking; maintenance hangars; FBO for fueling/maintenance; and miscellaneous access roads. Environmental concerns for the new airport alternative include an extensive cut-and-fill program, terrestrial and marine environmental impacts, and closure of existing facilities during construction. The "no project" alternative will also be included in the EIS, plus discussion of other alternative sites that were eliminated from further evaluation.

James J. Wiggins,

Manager, Planning and Programming Branch, Airport Division, Western-Pacific Region.

[FR Doc. 89-12060 Filed 5-18-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Eau Claire and Chippewa Counties, WI

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 on U.S. 53 in Eau Claire and Chippewa Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn D. Lawton, Environmental Coordinator, Wisconsin Division, FHWA, 4502 Vernon Boulevard, Madison, Wisconsin 53705-4905, Telephone: (608) 264-5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Route 53 (U.S. 53) in Eau Claire and Chippewa Counties, Wisconsin. The proposed improvements to U.S. 53 would provide a divided four-lane, limited access highway on new location extending from Interstate 94 (I 94) to State Trunk Highway 124 (STH 124), a distance of about ten miles. Improvements to the corridor are considered necessary to provide safe travel for existing and projected traffic demand.

Alternatives under consideration include: (1) Taking no action; (2) widening the existing six-lane U.S. 53; (3) constructing a four-lane, limited access highway on new location, bypassing the City of Eau Claire to the east a distance of about eight miles (inner bypass); and (4) constructing a four-lane, limited access highway on new location, bypassing the City of Eau Claire to the east, a distance of about ten miles (outer bypass). Incorporated into the studies of the build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments have been 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. Meetings with public officials will be held in Eau Claire between June and December 1989. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. The scoping process is currently underway.

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 on Federal programs and activities apply to this program.)

Issued on: May 12, 1989.

Frank M. Mayer,

Division Administrator, Madison, Wisconsin.

[FR Doc. 89-12004 Filed 5-18-89; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in October-December 1988. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2582-X	DOT-E 2582	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT Specification 3E1800, with certain exceptions. (Modes 1, 2, 3, and 4.)
2709-P	DOT-E 2709	Aerojet Solid Propulsion Co., Sacramento, CA.	49 CFR 173.62, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To become a party to exemption 2709 (Mode 1.)
2709-X	DOT-E 2709	Atlantic Research Corp., Camden, AR.	49 CFR 173.62, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize use of DOT Specification 6J/2S or 6D/2S metal drum/ploye thylene containers or non-DOT specification drums, for shipment of Class A and B explosive liquids. (Mode 1.)
2709-X	DOT-E 2709	Atlas Powder Co., Dallas, TX	49 CFR 173.62, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize carriage of several Class A of Class B explosives in the same motor vehicle. (Mode 1.)
2709-X	DOT-E 2709	Trojan Corp., Spanish Fork, UT	49 CFR 173.62, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize use of DOT Specification 6J/2S or 6D/2S metal drum/ploye thylene containers or non-DOT specification drums, for shipment of Class A and B explosive liquids. (Mode 1.)
2709-X	DOT-E 2709	IRECO, Inc., Salt Lake City, UT	49 CFR 173.62, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize use of DOT Specification 6J/2S or 6D/2S metal drum/ploye thylene containers or non-DOT specification drums, for shipment of Class A and B explosive liquids. (Mode 1.)
2709-X	DOT-E 2709	Atlas Powder Co., Dallas, TX	49 CFR 173.62, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize use of DOT Specification 6J/2S or 6D/2S metal drum/ploye thylene containers or non-DOT specification drums, for shipment of Class A and B explosive liquids. (Mode 1.)
2709-X	DOT-E 2709	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.62, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize use of DOT Specification 6J/2S or 6D/2S metal drum/ploye thylene containers or non-DOT specification drums, for shipment of Class A and B explosive liquids. (Mode 1.)
2709-X	DOT-E 2709	United Technologies Corp., San Jose, CA.	49 CFR 173.62, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize use of DOT Specification 6J/2S or 6D/2S metal drum/ploye thylene containers or non-DOT specification drums, for shipment of Class A and B explosive liquids. (Mode 1.)
2709-X	DOT-E 2709	Hercules, Inc., Wilmington, DE	49 CFR 173.62, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize use of DOT Specification 6J/2S or 6D/2S metal drum/ploye thylene containers or non-DOT specification drums, for shipment of Class A and B explosive liquids. (Mode 1.)
3095-X	DOT-E 3095	The Dow Chemical Co., Midland, MI.	49 CFR 173.119(a), 173.245(a), 173.248(a), 173.263(a), 173.264, 173.283, 173.289, 178.342-5, 178.343-5.	To authorize use of a non-DOT specification cargo tank, for shipment of certain hazardous materials. (Modes 1 and 3.)
3630-X	DOT-E 3630	J.T. Baker Chemical Co., Phillipsburg, NJ.	49 CFR 177.839(a), 177.839(b)	To authorize use of a DOT Specification 33A polystyrene case to contain four 5-pint glass bottles of nitric acid. (Mode 1.)
3630-X	DOT-E 3630	Mallinckrodt, Inc., Paris, KY	49 CFR 177.839(a), 177.839(b)	To authorize use of a DOT Specification 33A polystyrene case to contain four 5-pint glass bottles of nitric acid. (Mode 1.)
4052-X	DOT-E 4052	Boeing Commerical Airplanes, Seattle, WA.	49 CFR 173.305, 173.34, 175.3	To authorize an increase in the volumetric capacity to 35 fluid ounces and a change in the Proper Shipping Name to Nitrogen. (Modes 1, 2, 4, and 5.)
4453-P	DOT-E 4453	Energy Ventures Corp., dba Columbus Powder Co., Columbus, IN.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4575-X	DOT-E 4575	Union Carbide Corp., Danbury, CT	49 CFR 173.314(c), 173.315(a)	To authorize use of DOT Specification 106A500X and 110A500W mutil unit tank car tanks; DOT Specification 105A300W, 112A340W, 114A340W tank car tanks and the proposed AAR 120A300W, 112A340W tank cars, for transportation of certain liquefied compressed gases. (Modes 1, 2, and 3.)
4575-X	DOT-E 4575	Racon, Inc., Wichita, KS	49 CFR 173.314(c), 173.315(a)	To authorize use of DOT Specification 106A500X and 110A500W mutil unit tank car tanks; DOT Specification 105A300W, 112A340W, 114A340W tank car tanks and the proposed AAR 120A300W, 112A340W tank cars, for transportation of certain liquefied compressed gases. (Modes 1, 2, and 3.)
4631-X	DOT-E 4631	Nitrochem Energy Corp., Biwabik, MN.	49 CFR 173.114a, 173.304(a)	To authorize use of non-DOT specification hopper-type tank trucks and cargo tank trailers, for shipment of a blasting agent and a nonflammable compressed gas. (Mode 1.)
4698-X	DOT-E 4698	United Technologies Automotive Group, Howe, IN.	49 CFR 173.302(a)(1), 175.3	To authorize use of non-DOT specification hydraulic accumulators, for shipment of a certain nonflammable compressed gas. (Mode 1, 2, 3, and 4.)
5022-X	DOT-E 5022	National Aeronautics and Space Administration, Washington, DC.	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1, 2.)
5022-X	DOT-E 5022	Atlantic Research Corp., Gainesville, VA.	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1, 2.)
5022-X	DOT-E 5022	McDonnell Douglas Astronautics Co., Huntington Beach, CA.	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1, 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
5038-X	DOT-E 5038	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.247(a)(1), 173.346, 173.620,173.630, 175.3.	To authorize shipment of dimetheyldichlorosilane, trichlorosilane, other specifically identified flammable liquids, silicon tetrachloride, carbon tetrachloride and choloroform in non-DOT specification type 304 stainless steel cylinders. (Modes 1, 2, 3, and 4.)
5248-X	DOT-E 5248	Rockwell International Corp., Anaheim, CA.	49 CFR 173.431(a), 175.3	To authorize shipment of a certain quantity of polonium-210 in any DOT Specification approved outer Type A packaging. (Modes 1, 2, and 4.)
5557-X	DOT-E 5557	U.S. Department of Energy, Washington, DC.	49 CFR Part 173, Subpart C	To authorize use of non-DOT specification containers, for shipment of certain explosives, and gross weight exceeding prescribed limits. (Mode 1.)
5600-X	DOT-E 5600	Airco Special Gases, San Marcos, CA.	49 CFR 175.3, Part 173, Subparts D, F, G.	To authorize transport of flammable or nonflammable compressed gases, flammable, corrosive liquids or oxidizers presently authorized to be shipped in a DOT Specification 3A cylinder, to be shipped in a non-DOT specification cylinder made to DOT-3A specification with certain exceptions. (Modes 1, 2, and 4.)
6263-X	DOT-E 6263	Amtrol, Inc., West Warwick, RI	49 CFR 173.302(a)(1)	To authorize non-DOT specification welded, cylindrical or spherical steel tanks with greater working pressures that are tested to greater pressures as additional packagings. (Modes 1, 2.)
6267-X	DOT-E 6267	Bio-Lab, Inc., Decatur, GA	49 CFR 173.154, 173.217(a)	To authorize use of DOT Specification 12B corrugated fiberboard boxes with inside polyethylene bottles and non-DOT specification double-faced fiberboard boxes, for transportation of certain oxidizing materials. (Modes 1, 2, and 3.)
6267-X	DOT-E 6267	Pool Chem Inc., dba Coastal Industries, Passaic, NJ.	49 CFR 173.154, 173.217(a)	To authorize use of DOT Specification 12B corrugated fiberboard boxes with inside polyethylene bottles and non-DOT specification double-faced fiberboard boxes, for transportation of certain oxidizing materials. (Modes 1, 2, and 3.)
6267-X	DOT-E 6267	Berry Plastics, Inc., Evansville, IN	49 CFR 173.154, 173.217(a)	To authorize use of DOT Specification 12B corrugated fiberboard boxes with inside polyethylene bottles and non-DOT specification double-faced fiberboard boxes, for transportation of certain oxidizing materials. (Modes 1, 2, and 3.)
6267-X	DOT-E 6267	Alden Leeds, Inc., South Kearny, NJ.	49 CFR 173.154, 173.217(a)	To authorize use of DOT Specification 12B corrugated fiberboard boxes with inside polyethylene bottles and non-DOT specification double-faced fiberboard boxes, for transportation of certain oxidizing materials. (Modes 1, 2, and 3.)
6349-X	DOT-E 6349	Union Carbide Corp., Danbury, CT	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification insulated, containerized portable tanks, for shipment of certain flammable and nonflammable gases. (Modes 1, 2, and 3.)
6418-P	DOT-E 6418	The McGregor Co., Colfax, WA	49 CFR 173.357(b)	To become a party to exemption 6418. (Mode 1.)
6418-P	DOT-E 6418	Quincy Farm Chemicals, Inc., Quincy, WA.	49 CFR 173.357(b)	To become a party to exemption 6418. (Mode 1.)
6418-P	DOT-E 6418	Nexus Ag Chemicals, Inc., Quincy WA.	49 CFR 173.357(b)	To become a party to exemption 6418. (Mode 1.)
6418-P	DOT-E 6418	Tri-River Chemical Co., Inc., Pasco, WA.	49 CFR 173.357(b)	To become a party to exemption 6418. (Mode 1.)
6418-P	DOT-E 6418	Basin Fumigation, Quincy, WA	49 CFR 173.357(b)	To become a party to exemption 6418. (Mode 1.)
6418-X	DOT-E 6418	Farmer's Supply Co-operative, Inc., Ontario, OR.	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310 or MC-312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1.)
6434-X	DOT-E 6434	Rhone-Poulenc Ag Co., Research Triangle Park, NC.	49 CFR 173.377(i)(1)	To authorize use of non-DOT specification paper bags, for transportation of a poisonous B solid material. (Modes 1 and 2.)
6434-X	DOT-E 6434	Rhone-Poulenc, Inc., Princeton, NJ	49 CFR 173.377(i)(1)	To authorize use of non-DOT specification paper bags, for transportation of a poisonous B solid material. (Modes 1 and 2.)
6518-X	DOT-E 6518	AKZO Chemicals, Inc., Chicago, IL	49 CFR 172.101 172.302, 173.119, 173.134, 173.154.	To authorize shipment of specified pyrophoric liquids and solids, water reactive solid and certain other flammable liquids, in non-DOT specification steel portable tanks or cylinders. (Modes 1 and 3.)
6614-P	DOT-E 6614	Leslie's Swimming Pool Supplies, Chatsworth, CA.	49 CFR 173.263(a)(28), 173.277(a)(6).	To become a party to exemption 6614 (Mode 1.)
6626-X	DOT-E 6626	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.34(e)(15)(i), 173.34(e)(15)(v), 175.3.	To authorize use of DOT Specification 3A or 3AA cylinders and cylinders marked ICC-3, 3A or 3AA, for shipment of certain compressed gases. (Modes 1, 2, 3, 4, and 5.)
6626-X	DOT-E 6626	Brown Welding Supply, Inc., Salina, KS.	49 CFR 173.34(e)(15)(i), 173.34(e)(15)(v), 175.3.	To authorize use of DOT Specification 3A or 3AA cylinders and cylinders marked ICC-3, 3A or 3AA, for shipment of certain compressed gases. (Modes 1, 2, 3, 4, and 5.)
6651-X	DOT-E 6651	Heatbath Corp., Chicago, IL	49 CFR 173.28(h), 173.28(m)	To authorize one-time reuse of single-trip containers, for transportation of certain Class B poisonous solids.(Mode 1.)
6810-P	DOT-E 6810	U.S. Department of the Interior, Amarillo, TX.	49 CFR 173.302(a)(1)	To become a party to exemption 6810. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6810-X	DOT-E 6810	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(a)(1)	To reinstate exemption originally issued for shipment of Helium, classed as nonflammable gas, in DOT Specification 107A tanks mounted on motor vehicles chassis. (Mode 1.)
6874-X	DOT-E 6874	ICI Americas, Inc., Wilmington, DE	49 CFR 172.101, 173.370(a)(13)	To modify exemption, to revise net contents to one metric ton, to change box dimensions to 45×45×43½ inches and to allow for polyester lid securing straps. (Modes 1, 2, and 3.)
6874-X	DOT-E 6874	Mitsui & Co. (U.S.A.), Inc., New York, NY.	49 CFR 172.101, 173.370(a)(13)	To authorize transport of sodium and potassium cyanides in non-DOT specification wooden boxes. (Modes 1, 2, and 3.)
6874-X	DOT-E 6874	Degussa Corp., Ridgefield Park, NJ	49 CFR 172.101, 173.370(a)(13)	To authorize the increase of shipping weight to 1000kg (2205 pounds) in each box instead of up to 2000 pounds. (Modes 1, 2, and 3.)
6902-X	DOT-E 6902	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.314(c), 179.300-15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT Specification 110A800W multi-unit tank car tank. (Modes 1 and 2.)
6922-X	DOT-E 6922	Great Lakes Chemical Corp., EL Dorado, AR.	49 CFR 173.314(c), 179.300-15	To authorize use of a DOT Specification 106A500-X multi-unit tank car tank, for shipment of certain compressed gases. (Modes 1, 2, and 3.)
6922-X	DOT-E 6922	Shin-Etsu Silicones of America, Inc., Torrance, CA.	49 CFR 173.314(c), 179.300-15	To authorize use of a DOT Specification 106A500-X multi-unit tank car tank, for shipment of certain compressed gases, (Modes 1, 2, and 3.)
6922-X	DOT-E 6922	Shin-Etsu Chemical Co., Ltd., Tokyo, Japan.	49 CFR 173.314(c), 179.300-15	To authorize use of a DOT Specification 106A500-X multi-unit tank car tank, for shipment of certain compressed gases. (Modes 1, 2, and 3.)
6922-X	DOT-E 6922	GE Silcones, Waterford, NY	49 CFR 173.314(c), 179.300-15	To authorize use of a DOT Specification 106A500-X multi-unit tank car tank, for shipment of certain compressed gases. (Modes 1, 2, and 3.)
6963-X	DOT-E 6963	I.S.C., Ltd., Bristol, England	49 CFR 173.264(a), 173.264(b)	To authorize use of non-DOT specification intermodal portable tanks, for transportation of hydrofluoric acid and anhydrous hydrofluoric acid. (Modes 1, 3.)
7046-X	DOT-E 7046	J.T. Baker Chemical Co., Phillipsburg, NJ.	49 CFR 173.269, 178.340-5(c)	To authorize use of modified DOT Specification MC-312 glass lined cargo tanks, for transportation of certain corrosive liquids and a certain oxidizer. (Modes 1, 3.)
7052-P	DOT-E 7052	Adcour, Inc., Sharon, MA	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Maxell Corp. of America, Fair Lawn, NJ.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Hitachi-Maxell, Ltd., Tokyo, Japan	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Hydril Production Technology Division, Houston, TX.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Wimpol, Inc., Houston, TX	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Honeywell, Inc.—Defense Avionics Systems Div. Albuquerque, NM.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, and 4.)
7070-X	DOT-E 7070	American Chemical & Refining Co., Inc., Waterbury, CT.	49 CFR 173.365, 175.3, 175.630	To authorize shipment of a poison B solid in a plastic jar overpacked in a metal can equivalent to DOT Specification 2N, packed in a single-faced corrugated DOT Specification 12B fiberboard box. (Modes 4, 5.)
7227-X	DOT-E 7227	Lox Equipment Co., Delphi, IN	49 CFR 172.203, 173.318, 173.32, 173.320, 175.3, 176.30, 176.76, 178.338.	To authorize manufacture, marketing and sale of vacuum insulated non-DOT specification portable tanks, for transportation of liquid nitrogen. (Modes 3, 4.)
7255-X	DOT-E 7255	U.S. Department of Defense, Falls Church, VA.	49 CFR 146.29-45(a), 146.29-45(c).	To authorize simultaneous loading of two holds within the same hatch when handling military explosives. (Mode 3.)
7275-X	DOT-E 7275	Express Airways, Inc., Sanford, FL	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
7601-X	DOT-E 7601	Atlantic Research Corp., Gainesville, VA.	49 CFR 173.53(e), 173.62	To authorize renewal and an additional destination for shipments of High explosives, liquid, Class A explosive. (Mode 1.)
7808-X	DOT-E 7808	Cline-Buckner, Inc., Artesia, CA	49 CFR 173.304, 175.3, 178.33a	To authorize shipment of insecticides and liquefied gas mixtures, in inside nonrefillable aluminum containers comparable to DOT Specification 2Q cylinders equipped with integral pressure relief system. (Modes 1, 2, 3, and 4.)
7808-X	DOT-E 7808	Whitmire Research Laboratories, Inc., Saint Louis, MO.	49 CFR 173.304, 175.3, 178.33a	To authorize shipment of insecticides and liquefied gas mixtures, in inside nonrefillable aluminum containers comparable to DOT Specification 2Q cylinders equipped with integral pressure relief system. (Modes 1, 2, 3, and 4.)
7811-P	DOT-E 7811	Mallinckrodt, Inc., Paris, KY	49 CFR 173.119(a)(23), 173.125, 173.245(a)(18), 173.346(a)(21), 173.347(a)(8), 175.3, 178.210.	To become a party to exemption 7811 (Modes 1, 2, 3, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7846-X	DOT-E 7846	Union Carbide Corp., Danbury, CT	49 CFR 173.314(c)	To authorize frame mounting and manifolding of DOT Specification seamless steel tank car tanks, for shipment of certain nonflammable gases. (Modes 1, 3.)
7873-X	DOT-E 7873	Bromine Compounds, Ltd Beer Sheva, Israel.	49 CFR 173.353a	To authorize use of non-DOT specification intermodal portable tanks, for transportation of a Class B poison liquid, (Modes 1, 2, 3, and 4.)
7891-X	DOT-E 7891	Reliance Electric Company Cleveland, OH.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, and 4.)
7945-X	DOT-E 7945	HTL Division, Pacific Scientific Co., Duarte, CA.	49 CFR 173.304(a)(1), 175.3, 178.47.	To amend exemption to increase the maximum allowable service pressure to 1500 psig from 900 psig and to change the wording in certain sections to make more correct. (Modes 1, 2, 4, and 5.)
7991-X	DOT-E 7991	Burlington Northern Railroad Co., Ft. Worth, TX.	49 CFR Parts 100-177	To authorize transport of railway track torpedoes and fusees in flagging kits of specified construction. (Mode 1.)
8053-X	DOT-E 8053	Eastman Kodak Co., Rochester, NY.	49 CFR 173.148(a), 175.3	To authorize shipment of monoethylamine in inside glass bottles/metal cans, overpacked in DOT Specification 12B fiberboard boxes. (Modes 1, 2, and 4.)
8063-X	DOT-E 8063	Taylor-Wharton, Division of Harsco Corp., Indianapolis, IN.	49 CFR 173.304(a)	To authorize alternative packagings for the shipment of refrigerated liquids classed as nonflammable gases. (Mode 1.)
8094-X	DOT-E 8094	Milport Chemical Co., Milwaukee, WI.	49 CFR 173.245, 173.249, 173.263, 173.268, 173.272.	To authorize shipment of corrosive materials in a DOT Specification 56 tank where a DOT Specification 60 tank is permitted in the regulations. (Modes 1.)
8119-X	DOT-E 8119	BJ-Titan Services, Houston, TX	49 CFR 173.119(a), (m), 173.245(a), 173.263(a), 178.342-5, 178.343-5.	To authorize use of a non-DOT specification cargo tank designed and constructed in full compliance with DOT Specification MC-307 or MC-312 with certain exceptions, for transportation of certain corrosive and flammable liquids (Mode 1.)
8126-X	DOT-E 8126	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.123, 173.315, 174.63(b).	To authorize use of non-DOT specification portable tanks, for transportation of certain liquefied petroleum gases and other gases classed as flammable gases and a flammable liquid. (Modes 1, 2, and 3.)
8156-X	DOT-E 8156	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8168-X	DOT-E 8168	Container Corp. of America, Wilmington, DE.	49 CFR Part 173, Subparts E, F, H	To authorize an alternative type of closure for the exempted packaging. (Modes 1, 2, and 3.)
8207-X	DOT-E 8207	Rexnord Chemical Product, Commerce City, CO.	49 CFR 171.12(b), 172.101, 173.245(a)(17), 175.3, 178.131.	To authorize an alternative shipping name. (Modes 1, 2, 3, and 4.)
8450-X	DOT-E 8450	Atlantic Research Corp., Camden, AR.	49 CFR 173.92	To authorize transport, in the applicant's vehicles, of containers of rocket motors within the designated shipping area. (Mode 1.)
8451-X	DOT-E 8451	Schlumberger Perforating and Testing Center, Rosharon, TX.	49 CFR 173.65, 173.86(e), 175.3	To authorize an additional packaging described as a 2 x 15 inch Schedule 80, seamless stainless steel pipe. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Reynolds Industries Systems, Inc., San Ramon, CA.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Ensign-Bickford, Co., Simsbury, CT	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pyrotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Boeing Military Airplanes, Wichita, KS.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-P	DOT-E 8451	Battelle Columbus Division, Columbus, OH.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, and 4.)
8451-P	DOT-E 8451	Motorola Tactical Electronics Division (TED), Scottsdale, AZ.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Battelle Columbus, Division, Columbus, OH.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8453-X	DOT-E 8453	Columbus Powder Co., Columbus, IN.	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Modes 1 and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8453-X	DOT-E 8453	El Dorado Chemical, Co., St. Louis, MO.	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Modes 1 and 3.)
8472-X	DOT-E 8472	Ohmart Corp., Cincinnati, OH	49 CFR 173.302, 175.3	To authorize use of non-DOT specification, metal, single trip, inside container, for shipment of a nonflammable gas. (Modes 1, 2, 3, 4, and 5.)
8477-X	DOT-E 8477	Mobay Corp., Pittsburgh, PA	49 CFR 173.247(a)	To authorize use of a noninsulated DOT Specification 111A100W6 tank car tanks, for transportation of thionyl chloride. (Mode 2.)
8480-X	DOT-E 8480	Gillette Co., Boston, MA	49 CFR 173.21(e), 173.24(a)(1), 175.3, Parts 172, 177.	To authorize transport of a flammable gas in a device which allows a slow rate of leakage of the gas. (Modes 1, 2, 3, and 5.)
8518-P	DOT-E 8518	Coast Vacuum Truck Service, Inc., Santa Maria, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518 (Mode 1.)
8518-P	DOT-E 8518	Parris Vacuum Service, Inc., Bakersfield, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518 (Mode 1.)
8520-X	DOT-E 8520	Atlas Powder Co., Dallas, TX	49 CFR 173.114a(b)(6), 175.3	To authorize use of a "pipe test" on a material being evaluated as a blasting agent, instead of fire test prescribed in 173.114a(b)(6). (Modes 1, 2, 3, and 4.)
8522-X	DOT-E 8522	Tuscarora Plastics, Inc., Sterling, VA.	49 CFR 177.839(a), 177.839(b), 178.150, Part 173 Subpart F.	Request authorization to modify polystyrene case by increasing thickness; incorporate a third strap etc., for shipment of commodities authorized in DOT Specification 33A. (Modes 1, 2, and 3.)
8523-P	DOT-E 8523	CCR/SATI, Paris La Defense, France.	49 CFR 173.304, 173.315	To become a party to exemption 8523. (Modes 1, 2, and 3.)
8523-X	DOT-E 8523	Arbel-Fauvet-Rail, Paris, France	49 CFR 173.304, 173.315	To authorize chloropentafluoroethane (R-115), classed as nonflammable gas, as an additional commodity. (Modes 1, 2, and 3.)
8526-X	DOT-E 8526	North Star Transport, Inc., St. Paul, MN.	49 CFR 177.834(L)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment. (Mode 1.)
8526-X	DOT-E 8526	3M, Saint Paul, MN	49 CFR 177.834(L)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment. (Mode 1.)
8526-X	DOT-E 8526	Phelco, Inc. Trucking, Hazelwood, MO.	49 CFR 177.834(L)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment. (Mode 1.)
8552-X	DOT-E 8552	Brenner Tank, Inc., Fond du Lac, WI.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8554-X	DOT-E 8554	Austin Powder Co., Cleveland, OH	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1 and 3.)
8554-X	DOT-E 8554	Mesabi Powder Co., Hibbing, MN	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1 and 3.)
8554-X	DOT-E 8554	Southwestern Explosives, Inc., Cleveland, OH.	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
8554-X	DOT-E 8554	Atlas Powder Co., Dallas, TX	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
8554-X	DOT-E 8554	J.H. Van Amburgh Explosives, Inc., Dallas, TX.	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
8554-X	DOT-E 8554	Olson Explosives, Inc., Decorah, IA	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
8554-X	DOT-E 8554	Quick Supply Co., Des Moines, IA	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
8554-X	DOT-E 8554	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
8554-X	DOT-E 8554	Evenson Explosives, Inc., Morris, IL	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
8580-X	DOT-E 8580	Priority Air, Inc., Sanford, FL	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8582-X	DOT-E 8582	Atchison, Topeka and Santa Fe Railway Co., Chicago, IL.	49 CFR Parts 100-177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.)
8582-P	DOT-E 8582	Cedar Valley Railroad Co., Osage, IA.	49 CFR Parts 100-177	To become a party to exemption 8582. (Mode 1.)
8582-P	DOT-E 8582	Iowa Northern Railway Co., Greene, IA.	49 CFR Parts 100-177	To become a party to exemption 8582. (Mode 1.)
8620-X	DOT-E 8620	Polar Tank Trailer, Inc., Holdingford, MN.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8679-X	DOT-E 8679	MicroD International, Burnsville, MN.	49 CFR 172.101, Column 6(a), 172.400, 173.286, 175.3, 175.30.	To authorize shipment of a water reactive material via air when packaged in the same outside packaging with separately packaged small quantities of a flammable liquid, a corrosive liquid, a corrosive solid, and non-hazardous materials, in non-DOT specification corrugated fiberboard boxes. (Modes 1, 4, and 5.)
8723-X	DOT-E 8723	A.E. Sibley, Inc., Middlefield, CT	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723-X	DOT-E 8723	Explosives Supply Co., Inc., Shirley, MA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723-X	DOT-E 8723	Falconi Construction, Inc., dba Alpha Explosives, Lincoln, CA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723-X	DOT-E 8723	Strawn Explosives, Inc., Dallas, TX	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8748-X	DOT-E 8748	Battelle, Pacific Northwest Laboratories, Richland, WA.	49 CFR 172.101, 173.302, 175.3	To authorize use of non-DOT specification containers, for transportation of a nonflammable gas. (Modes 1, 2, 3, 4, and 5.)
8748-X	DOT-E 8748	GE/Reuter-Stokes, Inc., Twinsburg, OH.	49 CFR 172.101, 173.302, 175.3	To authorize use of non-DOT specification containers, for transportation of a nonflammable gas. (Modes 1, 2, 3, 4, and 5.)
8787-X	DOT-E 8787	Motorola Semiconductor Sector, Phoenix, AZ.	49 CFR 173.119(a)(7), 173.249(a)(13), 173.272(g), 173.299(a)(1).	To authorize transport of certain flammable and corrosive liquids in DOT Specification 2E polyethylene bottles, packed in a DOT Specification 12B fiberboard box. (Mode 1.)
8864-X	DOT-E 8864	Miller Transporters, Inc., Jackson, MS.	49 CFR 173.245(a), 178.340-8, 178.340-10, 178.341-3, 178.341-4, 178.341-5, 178.341-7.	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-303, MC-305 and MC-306 cargo tanks, for transportation of corrosive liquids. (Mode 1.)
8867-X	DOT-E 8867	3M, St. Paul, MN	49 CFR 173.119(k), 175.3	To authorize shipment of a certain viscous flammable liquid, n.o.s. in a polyvinyl chloride bottle, overpacked six to a DOT Specification 12B fiberboard box. (Modes 1, 2, and 4.)
8871-X	DOT-E 8871	Chase Packaging Corp., Greenwich, CT.	49 CFR 173.182, 173.204, 173.217, 173.245(b), 173.366.	To authorize an additional material described as Sodium hydrosulfite and classed as a Flammable solid. (Modes 1, 2, and 3.)
8871-P	DOT-E 8871	IRECO, Inc., Salt Lake City, UT	49 CFR 173.182, 173.204, 173.217, 173.245(b), 173.366.	To become a party to exemption 8871 (Modes 1, 2, and 3.)
8873-X	DOT-E 8873	Akzo Chemicals, Inc., Chicago, IL	49 CFR 173.121	To authorize use of DOT Specification MC-312 cargo tanks, for transportation of carbon disulfide or carbon bisulfide. (Mode 1.)
8877-X	DOT-E 8877	Mallinckrodt, Inc., Paris, KY	49 CFR 173.119, 173.245	To authorize shipment of certain materials described as flammable liquid, corrosive, n.o.s. (corrosive to skin only) and corrosive liquids, n.o.s. in DOT-12B65, 12A65 and 12A80 fiberboard boxes with inside glass bottles having a capacity not to exceed one gallon. (Modes 1, 2, and 3.)
8886-X	DOT-E 8886	Amerex Corp., Trussville, AL	49 CFR 173.34(e)(8), (e)(9), 175.3	To authorize 12 year retest, in lieu of required 5 years retest, of DOT Specificiation 4BW cylinder in addition to the presently authorized DOT Specification 4B and 4B240ET cylinders. (Modes 1, 2, and 4.)
8886-X	DOT-E 8886	Amerex Corp., Trussville, AL	49 CFR 173.34(e)(8), (e)(9), 175.3	To modify the exemption to incorporate the use of hydrostatic proof test pressure method for retesting the cylinders under certain circumstances. (Modes 1, 2, and 4.)
8898-X	DOT-E 8898	Petrolane Gas Service Limited Partnership, Anchorage, AL.	49 CFR 173.315	To authorize use of a non-DOT specification ASME Code stamped portable tank, for transportation of liquefied comprtessed gases. (Modes 1, 3.)
8903-X	DOT-E 8903	Teledyne McCormick Selph, Hollister, CA.	49 CFR 172.101	To authorize transport of an initiating explosive, in plastic bottles, overpacked in DOT Specification 5, 5B, or 17H steel drums. (Mode 1.)
8923-X	DOT-E 8923	Union Carbide Corp., Danbury, CT	49 CFR 173.119(m), 173.3a	To authorize transport of a flammable liquid which is also corrosive in DOT Specification 51 portable tanks. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8927-X	DOT-E 8927	HTL Division of Pacific Scientific Co., Duarte, CA.	49 CFR 173.302(a), 175.3, 178.44	To authorize manufacture, marking and sale of non-DOT specification girth, welded steel spheres, for transportation of nonflammable gases. (Modes 1, 2, 4, and 5.)
8937-P	DOT-E 8937	L-Bar Products Inc., Ravensdale, WA.	49 CFR 173.178	To become a party to exemption 8937. (Modes 1, 2, and 3.)
8939-X	DOT-E 8939	Hollice Clark Truck Fabrication, Inc., Odessa, TX.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of six non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable liquids and corrosive liquids. (Mode 1.)
8942-X	DOT-E 8942	Poly Processing Co., Inc., Monroe, LA.	49 CFR 173.114a(h)(3), 173.266, 173.268, 176.415, 176.83, 178.19, 178.251, 178.253, Part 173, Subpart D, F.	To authorize manufacture, marking and sale of steel jacketed non-DOT specification rotationally molded, cross-linked polyethylene portable tanks, for shipment of flammable liquids, corrosive liquids and an oxidizer. (Modes 1, 2, and 3.)
8942-X	DOT-E 8942	Poly Cal Plastics, Inc., French Camp, CA.	49 CFR 173.114a(h)(3), 173.266, 173.268, 176.415, 176.83, 178.19, 178.251, 178.253, Part 173, Subpart D, F.	To authorize manufacture, marking and sale of steel jacketed non-DOT specificaiton rotationally molded, cross-linked polyethylene portable tanks, for shipment of flammable liquids, corrosive liquids and an oxidizer. (Modes 1, 2, and 3.)
8952-X	DOT-E 8952	Trojan Corp., Spanish Fork, UT	49 CFR 173.65	To authorize use of a DOT Specification 21C fiber drum, for transporting desensitized HMX (cyclotetramethylene tetranitramine). (Mode 1.)
8958-X	DOT-E 8958	GOEX, Inc., Belin Plant, Moosic, PA.	49 CFR 172.101, 173.60	To authorize transport of limited quantities of black powder, classed as a flammable solid, in DOT Specification 12H fiberboard boxes. (Modes 1, 2.)
8978-P	DOT-E 8978	Whittaker-Yardney Power Systems, Pawcatuck, CT.	49 CFR 172.101, 175.3	To become a party to exemption 8978. (Modes 1, 2, 3, and 4.)
8988-P	DOT-E 8988	Baker Sand Control, Liverpool, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to exemption 8988. (Modes 1, 3, and 4.)
9054-X	DOT-E 9054	Florida Drum Co., Inc., Pine Bluff, AR.	49 CFR 173.157	To reinstate exemption to provide for shipment of benzoyl peroxide 50% concentration in DOT Specification 34 containers of 55 gallon capacity. (Modes 1, 2, and 3.)
9064-X	DOT-E 9064	Corning Glass Works, Corning, NY	49 CFR 173.245, 173.247, 173.271, 173.3a.	To authorize Titanium tetrachloride, classed as Corrosive material, as an additional material in the exempted composite packaging. (Modes 1, 3.)
9069-X	DOT-E 9069	Ford Aerospace & Communications Corporation, San Jose, CA.	49 CFR 172.101 Column 6(b)	To authorize shipment of four rocket motors having excess gross weight, with other authorized hazardous and non-hazardous materials. (Mode 4.)
9180-X	DOT-E 9180	M & G Tankers, Limited, West Midlands, England.	49 CFR 173.119, 178.340, 178.341	To include gasoline blended with either methanol or ethanol as an additional commodity. (Mode 1.)
9180-X	DOT-E 9180	M & G Tankers, Limited, West Midlands, England.	49 CFR 173.119, 178.340, 178.341	To authorize manufacture, marking and sale of non-DOT specification cargo tanks manufactured from fiber reinforced plastics, for shipment of flammable liquids. (Mode 1.)
9197-X	DOT-E 9197	Greif Bros. Corp., Springfield, NJ	49 CFR 173.119(a), Part 173, Subpart F.	To authorize manufacture, marking and sale of DOT Specification 34 drums, for transportation of certain flammable liquids. (Modes 1, 2, and 3.)
9222-X	DOT-E 9222	Clean Harbors of Kingston, Inc., South Boston, MA.	49 CFR 173.154	To authorize use of non-DOT specification metal tanks, for transportation of a flammable liquid or flammable solid. (Mode 1.)
9228-X	DOT-E 9228	Southern California Chemical Co., Inc., Santa Fe Springs, CA.	49 CFR 173.245, 173.263, 178.340, 178.343.	To authorize use of non-DOT specification cargo tanks, for transportation of corrosive materials. (Mode 1.)
9243-X	DOT-E 9243	Abatar, Inc., Winter Park, FL	49 CFR 173.111(a)(3), 175.30, Part 172, Subpart D, E.	To authorize shipment of a trick noise maker in outside packagings which are not required to be marked or labeled. (Modes 1, 2, 3, 4, and 5.)
9271-X	DOT-E 9271	Union Pacific Railroad Co., Omaha, NE.	49 CFR 174.90	To authorize deviation from car separation requirements, for transportation of Class A and B explosives. (Mode 2.)
9271-X	DOT-E 9271	Missouri Pacific Railroad Co., Omaha, NE.	49 CFR 174.90	To authorize deviation from car separation requirements, for transportation of Class A and B explosives. (Mode 2.)
9275-P	DOT-E 9275	Qual-Pro-Services, Inc., Mahwah, NJ.	49 CFR Parts 100-199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, and 5.)
9275-P	DOT-E 9275	BIC Corp., Milford, CT	49 CFR Parts 100-199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, and 5.)
9277-X	DOT-E 9277	American Cyanamid Co., Wayne, NJ.	49 CFR 173.377(j)	To authorize an increase in the net weight capacity of the non-DOT Specification multiwall bag from 50 pounds to 55.1 pounds (25 Kilograms). (Modes 1, 2.)
9280-X	DOT-E 9280	Dow Corning Corp., Midland, MI	49 CFR 173.119(m)	To authorize use of DOT Specification MC-330 and MC-331 cargo tank, for transportation of flammable liquids which are also corrosive materials. (Mode 1.)
9280-X	DOT-E 9280	Union Carbide Corp., Danbury, CT	49 CFR 173.119(m)	To authorize use of DOT Specification MC-330 and MC-331 cargo tank, for transportation of flammable liquids which are also corrosive materials. (Mode 1.)
9280-X	DOT-E 9280	GE Silicones, Waterford, NY	49 CFR 173.119(m)	To authorize use of DOT Specification MC-330 and MC-331 cargo tank, for transportation of flammable liquids which are also corrosive materials. (Mode 1.)
9282-X	DOT-E 9282	Halocarbon Products Corp. North Augusta, SC.	49 CFR 173.314(c)	To authorize deletion of the pressure relief valves placement requirement. (Modes 1, 2, and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9295-X	DOT-E 9295	Applied Companies, San Fernando, CA.	49 CFR 173.302(a)	To authorize manufacture, marking and sale of non-DOT specification toroidal pressure vessel equivalent to a DOT Specification 39 cylinder, for transportation of non-flammable, nonliquified gases. (Modes 1, 2, and 4.)
9302-X	DOT-E 9302	Airplanes, Inc dba Cal-West Aviation, Concord, CA.	49 CFR 175.702(b)(1), 175.702(b)(2)(i), 175.702(b)(2)(ii), 175.702(b)(2)(iii), 175.702(a)(3)(ii).	To authorize air transport of radioactive material without transport index and separation distance controls provided operations are in accordance with safety instructions provided by DOE or DOE contractor radiological safety personnel. (Mode 4.)
9305-X	DOT-E 9305	ARCO Pipe Line Co., Independence, KS.	49 CFR 173.119, 173.304, 173.315	To authorize use of a non-DOT specification container, for transportation of flammable liquids and gases. (Mode 1.)
9316-X	DOT-E 9316	Fluoroware Inc., Chaska, MN	49 CFR 173.268, 173.28(k), 173.299, 178.35, 178.35, Part 173, Subpart F.	To authorize manufacture, marking and sale of a non-DOT specification inside packaging of teflon PFA plastic, similar to DOT-2SL, contained in a DOT-6D steel overpack, for shipment of up to 70% nitric acid and those corrosive liquids authorized in a DOT-6D/2L or 2SL composite packaging. (Modes 1, 2, and 3.)
9317-X	DOT-E 9317	Dow Chemical U.S.A., Freeport, TX	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification skid mounted portable tanks to be transported on public highway within company property. (Mode 1.)
9323-X	DOT-E 9323	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.119(a)	To authorize shipment only by the U.S. Department of Defense of gasoline, JP-4 fuel, and JP-5 fuel, classed as flammable liquids, in non-DOT specification collapsible, fabric reinforced rubber drums of 500 gallon capacity. (Mode 1.)
9327-X	DOT-E 9327	Precision Measurement, Inc., Tulsa, OK.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of mechanical displacement meter provers mounted on a truck chassis or trailer, for shipment of flammable liquids and gases. (Mode 1.)
9332-X	DOT-E 9332	Engelhard Corp., Edison, NJ	49 CFR 172.101, 173.150, 175.3	To authorize transport of a solid explosive dissolved in an ammonia solution as a flammable solid, in DOT Specification 34 polyethylene containers or DOT Specification 2E polyethylene bottles, packed in DOT Specification 15A wooden boxes. (Modes 1, 2, and 4.)
9355-P	DOT-E 9355	Matsushita Battery Industrial Co., Ltd., Moriguchi—Osaka 570 Japan.	49 CFR Parts 100-177	To become a party to exemption 9355. (Modes 1, 2, 3, 4 and 5.)
9381-P	DOT-E 9381	Dominion Zinc Co., Spokane, WA	49 CFR 173.154	To become a party to exemption 9381. (Modes 1, 2.)
9393-X	DOT-E 9393	Sexton Can Co., Inc., Cambridge, MA.	49 CFR 173.304(a), 178.65	To authorize rail and cargo vessel as additional modes of transportation. (Modes 1, 2, and 3.)
9400-X	DOT-E 9400	Poly Processing Co., Inc., Monroe, La.	49 CFR 173.114a(h)(3), 173.119, 173.125, 173.268, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F.	To authorize an additional closure system for the non-DOT specification portable tank. (Modes 1, 2, and 3.)
9480-P	DOT-E 9480	Liquid Carbonic Specialty Gas Corp., Chicago, IL.	49 CFR 173.302(a)(5)	To become a party to exemption 9480. (Modes 1, 2, 3, and 4.)
9485-X	DOT-E 9485	Chem-Tech, Limited, Des Moines, IA.	49 CFR 173.305	To authorize an increase in total vapor pressure for mixtures shipped under the exemption, from 140 psig at 130 degrees F to 286 psig at 130 degrees F. (Modes 1, 2, and 3.)
9487-P	DOT-E 9487	Chem-Tech, Limited, Des Moines, IA.	49 CFR 173.304	To become a party to exemption 9487. (Mode 1.)
9498-X	DOT-E 9498	Rentokil, Inc., Norcross, GA	49 CFR 173.365, 173.367, 173.370	To authorize shipment of Copper arsenide, classed as Poison B, in a non-DOT flexible intermediate bulk polypropylene bag. (Modes 1, 2, and 3.)
9505-X	DOT-E 9505	Witco Corp., Richmond, CA	49 CFR 173.157	To authorize transport of wet benzoyl peroxide in polyethylene containers, packed in DOT Specification 12B fiberboard boxes. (Mode 1.)
9548-X	DOT-E 9548	Ethyl Corp., Baton Rouge, LA	49 CFR 173.354, 178.245	To authorize use of a non-DOT specification IMO Type 1 portable tank, for shipment of motor fuel antiknock compound. (Modes 1, 2, and 3.)
9583-X	DOT-E 9583	Schlumberger Well Service, Houston, TX.	49 CFR 173.119, 173.302, 173.304, 173.34(d), 175.3.	To authorize use of a non-DOT specification welded, high pressure cylinder for oil sampling purposes. (Modes 1, 2, 3, and 4.)
9584-X	DOT-E 9584	Schlumberger Well Services, Houston, TX.	49 CFR 173.119, 173.302, 173.304, 175.3.	To authorize use of a non-DOT specification seamless cylinder designed and constructed in accordance with DOT Specification 3A, for gas sampling purposes. (Modes 1, 2, 3, and 4.)
9618-X	DOT-E 9618	ENPAC Corp., Jacksonville, FL	49 CFR 173.3(c)	To authorize manufacture, marking and sale of polyethylene, removable head, salvage drums of 90-gallon capacity for overpacking damaged or leading packages of hazardous materials, or for packing hazardous materials that have spilled or leaked, for repackaging or disposal. (Modes 1, 2.)
9623-X	DOT-E 9623	Quick Supply Co., Des Moines, IA	49 CFR 177.835(c)(3)	To authorize transport of blasting agent or an oxidizer in a DOT Specification MC-306 or MC-307 cargo tank with a storage box containing Class A explosives mounted directly behind the tractor cab. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9628-X	DOT-E 9628	Degussa Corp., Ridgefield Park, NJ	49 CFR 173.2435(b)	To authorize an additional lining of polyethylene/aluminum foil lamination. (Modes 1, 2, and 3.)
9637-X	DOT-E 9637	Connelly Containers, Inc., Bala-Cynwyd, PA.	49 CFR 173.245b, 173.365	To authorize manufacture, marking and sale of non-reusable, fiberboard bulk boxes made of triple-wall corrugated fiberboard having a inside line of 0.006-inch minimum thickness polyethylene film, for transportation of various corrosive solids and poison B solids. (Mode 1.)
9652-X	DOT-E 9652	Western Atlas International, Inc., Houston, TX.	49 CFR 173.103, 173.66(e)(2), 175.3.	To authorize an alternative packaging arrangement for the shipment of acceptor assemblies, described as Detonators, Classed as Class C explosives. (Modes 1, 4, and 5.)
9654-X	DOT-E 9654	Degussa Corp., Ridgefield Park, NJ	49 CFR 173.266(a)(2), 178.109-6	To authorize shipment of hydrogen peroxide solution exceeding 52% concentration, in aluminum drums conforming to DOT Specification 44D except for rolling hoops. (Modes 1, 2, and 3.)
9654-X	DOT-E 9654	Interox America, Houston, TX	49 CFR 173.266(a)(2), 178.109-6	To authorize shipment of hydrogen peroxide solution exceeding 52% concentration, in aluminum drums conforming to DOT Specification 44D except for rolling hoops. (Modes 1, 2, and 3.)
9657-X	DOT-E 9657	Noranda Sales Corp., Toronto, Ont	49 CFR 173.272, 179.201-1	To authorize use of DOT Specification 111A100W2 tank cars with bottom outlets, for transportation of sulfuric acid or oleum, classed as a corrosive material. (Mode 2.)
9658-X	DOT-E 9658	Fluoroware, Inc., Chaska, MN	49 CFR 173.119, 173.268, 173.299(b) 178.19, 178.253, Part 173, Subpart F.	To authorize shipment of Nitric acid (71% concentration or less), classed as an Oxidizer, in the non-DOT Specification composite polyethylene and plastic, portable tank. (Modes 1 and 2.)
9670-X	DOT-E 9670	Hercules, Inc., Wilmington, DE	49 CFR 173.65(j)	To authorize DOT Specification 21C fiber drums to be marked on the side instead of both ends as required in Section 173.65(j) when the ends of the drums have been dipped in wax. (Mode 1.)
9676-P	DOT-E 9676	Mallinckrodt, Inc., Paris, KY	49 CFR 173.119(b)(4), 173.125, 178.205.	To become a party to exemption 9676. (Mode 1.)
9692-X	DOT-E 9692	Halliburton Services, Duncan, OK	49 CFR 173.119(m)	To authorize use of DOT Specification 57 portable tanks for shipment of a dual hazard (flammable liquid/corrosive to skin only) material. (Mode 1.)
9702-X	DOT-E 9702	Chase Packaging Corp., Greenwich, CT.	49 CFR 173.154(a)	To authorize manufacture, marking and sale of a non-DOT specification multiwall kraft paper pinch/seal bag of 25-pound and 50-pound net construction, for shipment of calcium nitrite, and oxidizer, n.o.s. (Modes 1 and 2.)
9704-X	DOT-E 9704	Western Atlas International (formerly Dresser), Houston, TX.	49 CFR 173.107, 175.3	Identification of an additional packaging. (Modes 1, 3, 4, and 5.)
9708-P	DOT-E 9708	Reade Manufacturing Co., Lakehurst, NJ.	49 CFR 173.220(b)	To become a party to exemption 9708. (Mode 1.)
9708-P	DOT-E 9708	Hart Metals, Inc., Tamaqua, PA	49 CFR 173.220(b)	To become a party to exemption 9708. (Mode 1.)
9716-X	DOT-E 9716	Comdyne I, Inc., West Liberty, OH	49 CFR 173.302(a)(1), 173.304(a), (d), 175.3.	To authorize the use of 6061-T6 aluminum liners in addition to the current 6351-T6 aluminum liners. (Modes 1, 2, 3, 4, and 5.)
9723-P	DOT-E 9723	Chemical Waste Management, Inc., Technical Service Alsip, IL.	49 CFR 177.848(b)	To authorize party status and an additional outer packaging constructed of polyethylene in lieu of a DOT Specification 17H or 17E drum. (Mode 1.)
9746-X	DOT-E 9746	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.264	To authorize cargo vessel as an additional mode of transportation. (Modes 1, 3.)
9747-P	DOT-E 9747	Heartland Industries, Inc., City of Industry, CA.	49 CFR 173.304(d)(3), 173.306, 175.3, 178.33-2, 178.33-7.	To become a party to exemption 9747. (Modes 1, 2, 3, and 4.)
9750-P	DOT-E 9750	Atlas Powder Co., Dallas, TX	49 CFR 173.154(a)(18)	To become a party to exemption 9750. (Mode 1.)
9785-P	DOT-E 9785	Ivaran Agencies, Inc., New York, NY.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785. (Modes 1, 2, and 3.)
9785-P	DOT-E 9785	Farrell Lines Inc., New York, NY	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785. (Modes 1, 2, and 3.)
9785-P	DOT-E 9785	Orient Overseas Container Line Ltd., Hong Kong, China.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785. (Modes 1, 2, and 3.)
9785-P	DOT-E 9785	Associated Container Transportation (U.S.A.), New York, NY.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785. (Modes 1, 2, and 3.)
9785-P	DOT-E 9785	Columbus Line, Jersey City, NJ	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785. (Modes 1, 2, and 3.)
9785-P	DOT-E 9785	ECAM Container Agencies, Inc., Metairie, LA.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785. (Modes 1, 2, and 3.)
9833-P	DOT-E 9833	Wacker Chemie, GmbH, Munich 22, West Germany, CT.	49 CFR 173.384	To authorize party status to the exemption and change water capacity from 4887 U.S. gallons to 4887 nominal U.S. gallons. (Modes 1 and 3.)
9841-X	DOT-E 9841	Consani Engineering (Pty) Limited, Elsies River 7480, South.	49 CFR 173.315, 178.245-1(b)	To authorize additional packagings, similar to those presently authorized, for shipment of materials classed as flammable gas or flammable liquid. (Models 1, 2, and 3.)
9861-X	DOT-E 9861	Degussa Corp., Ridgefield Park, NJ	49 CFR 173.154, 175.3	To authorize DOT Specification 44P polyethylene bags, as additional inside packagings, for shipment of a certain Oxidizer, n.o.s. (Modes 1, 2, 3, and 4.)
9884-X	DOT-E 9884	Puritan-Bennett Corp., Indianapolis, IN.	49 CFR 173.316, 178.57-(8)(c), 178.57-2.	To authorize marking of the package with letters ¼ inch high instead of 2 inches high and adding an additional transport system. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9940-X	DOT-E 9940	G.E. Reuter-Stokes, Twinsburg, OH..	49 CFR 172.400, 173.306, 175.3	To issue exemption originally issued on emergency basis to authorize shipment of non-DOT specification hermetically sealed electron tube devices containing certain nonflammable gases. (Modes 1, 2, 3, 4, and 5.)
9940-X	DOT-E 9940	G.E. Reuter-Stokes, Twinsburg, OH..	49 CFR 172.400, 173.306, 175.3	To authorize passenger carrying aircraft as additional mode of transportation. (Modes 1, 2, 3, 4, and 5.)
9953-P	DOT-E 9953	Stoops Express, Inc., Anderson, IN ..	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9706-N	DOT-E 9706	Taylor-Wharton, Division of Harsco Corp., Harrisburg, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 175.3, 178.37.	To authorize manufacture, marking and sale of non-DOT specification cylinder complying in part with the DOT-3AA specification, for transportation of certain flammable gases, nonflammable gases and poison A materials. (Modes 1, 2, 3, and 4.)
9747-N	DOT-E 9747	Aerosol Services Co., Inc., City of Industry, CA.	49 CFR 173.304(d)(3), 173.306, 175.3, 178.33-2, 178.33-7.	To authorize use of a non-DOT specification packaging, comparable to a DOT-2P except for size and thickness, for shipment of materials authorized in a DOT-2P. (Modes 1, 2, 3, and 4.)
9832-N	DOT-E 9832	L'Air Liquide, Sassenage, France.....	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840(h), 178.338.	To authorize manufacture, marking and sale of vacuum insulated non-DOT specification portable tanks, for transportation hazardous materials. (Modes 1 and 3.)
9843-N	DOT-E 9843	Bruin Engineered Parts Inc., Midland, Ontario, Canada.	49 CFR 173.1200(a)(8), 173.304(d)(3)(ii), (e), 173.306(a)(3), 175.3, 178.33a.	To authorize manufacture, marking and sale of nonrefillable, non-DOT specification inside metal container, for shipment of materials authorized in DOT Specification 2Q cylinders. (Modes 1, 2, 3, and 4.)
9876-N	DOT-E 9876	Metalcraft, Inc., Baltimore, MD.....	49 CFR 173.304(a)(2), 173.34(d).....	To authorize manufacture, marking and sale of DOT Specification 39 cylinders equipped with a fusible type pressure relief system, for transportation of nonflammable gases. (Modes 1 and 3.)
9893-N	DOT-E 9893	Poulet S.A., Pantin Cedex, France....	49 CFR 173.315, 178.245-3	To authorize shipment of difluoroethylene in non-DOT specification spherical steel pressure vessels. (Modes 1 and 3.)
9914-N	DOT-E 9914	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 173.114a	To authorize transport of certain blasting agents in DOT Specification MC-306, MC-307 and MC-312 cargo tanks; DOT Specification IM-101 and 102 portable tanks; and IMO Type I and Type 2 portable tanks. (Modes 1 and 3.)
9915-N	DOT-E 9915	Hercules Incorporated, Wilmington, DE.	49 CFR 173.28(m)	To authorize reuse of DOT-17H drums, for multiple shipments of nitrolulose, wet with not less than 30% alcohol or solvent, and nitrocellulose, wet with not less tha 20% water, without subjecting drums to reconditioning requirements when performing a specific inspection and cleaning program. (Modes 1, 2, and 3.)
9916-N	DOT-E 9916	B.S.L. Transport, Quievrechain, France.	49 CFR 173.124(a)(6)(i), (iii), (vii).....	To authorize shipment of ethylene oxide in 4,760 gallon DOT Specification 51 portable tanks with safety relief values set at 145 psig and a vacuum/perlite insulation system. (Modes 1, 2, and 3.)
9935-N	DOT-E 9935	Atlas Powder Co., Dallas, TX.....	49 CFR 173.66(c)	To authorize use of a non-specification, regular slotted corrugated fiberboard box to ship Class A and Class C detonators. (Modes 1, 2, 3, and 4.)
9936-N	DOT-E 9936	Siepe GmbH, 5014 Kerpen 3, West Germany.	49 CFR 173.154, 173.191, 173.217, 173.245b, 178.16.	To authorize manufacture, marking and sale of non-DOT removable head polyethylene drum of 30 liter capacity, comparable to DOT-35, for shipment of phosphorus pentachloride, and other corrosive materials and oxidizers presently authorized to be shipped in DOT Specification 35 drums. (Modes 1, 2, and 3.)
9937-N	DOT-E 9937	Van Leer Verpackungen GmbH, 5000 Koln 90, West Germany.	49 CFR 178.224, Part 173, Subparts E, F, and H.	To authorize manufacture, marking and sale of non-DOT specification fiber drums, not exceeding 100 liter capacity, for shipment of those hazardous materials authorized in DOT Specification 21C fiber drums. (Modes 1, 2, and 3.)
9944-N	DOT-E 9944	Sotralentz, S.A., Drulingen, France, FR.	49 CFR 173.119, 173.125, 173.266, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification blow molded, polyethylene portable tank enclosed in a steel frame, for the shipment of corrosive materials, flammable liquids, or an oxidizer. (Modes 1, 2, and 3.)
9945-N	DOT-E 9945	Westlite, Inc., Houston, TX.....	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9946-N	DOT-E 9946	Union Carbide-Linde Division, Danbury, CT.	49 CFR 173.327(a)	To authorize use of pneumatically operated valve of a packless design with non-perforated diaphragms backed by an additional gasketed sealing system on cylinders containing a poison A materials. (Modes 1, 2, and 3.)
9952-N	DOT-E 9952	Greif Bros. Corp., Springfield, NJ	49 CFR 178.131, Part 173, Subparts D, E, F and H.	To authorize manufacture, marking and sale of non-DOT Specification steel drums of 14" diameter conforming to DOT Specification 37A, except that the top cover or lid is constructed of plastic and secured by a metal lever action closing ring. (Modes 1, 2, and 3.)
9964-N	DOT-E 9964	United Technologies-Chemical System Division, San Jose, CA.	49 CFR 173.88, 173.92	To authorize transport of a Rocket motor in propulsive state, with igniter installed, which exceeds the weight limitation in 49 CFR. (Mode 1.)
9969-N	DOT-E 9969	G.C. Industries, Inc., Chatsworth, CA.	49 CFR 173.119, 173.121, 173.123, 173.124, 173.141, 173.145, 173.251, 173.252, 173.255, 173.264, 173.276, 173.302, 173.304, 173.328, 173.333, 173.336, 173.337, 173.352.	To authorize transport of small amounts of liquids and gases in diffusion tubes overpacked in capped pipe nipples. (Modes 1 and 4.)
9971-N	DOT-E 9971	Fisher Scientific Company, Fair Lawn, NJ.	49 CFR 173.119(a)(23), 173.245(a)(18), 175.3, 178.210.	To authorize use of a DOT Specification 12A fiberboard box, with hand holes, for shipment of certain flammable liquids and corrosive materials. (Modes 1 and 4.)
9981-N	DOT-E 9981	Garrison Industries, El Dorado, AR	49 CFR 173.268, 173.3a	To authorize use of a DOT Specification 42D aluminum drum of 30-gallon capacity for shipment of fuming nitric acid, instead of authorized DOT Specification 42B aluminum drums. (Mode 1.)
9985-N	DOT-E 9985	Taylor-Wharton Division of Harsco Corp., Indianapolis, IN.	49 CFR 173.304(a), 177.834(h)	To authorize manufacture, marking and sale of DOT Specification 4L cylinder for carbon dioxide, refrigerated liquid and provides for filling and discharging without removal from the vehicle. (Mode 1.)
9991-N	DOT-E 9991	Emergency Technical Services Corp. of Illinois, Schamburg, IL.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To authorize use of non-DOT specification steel, full opening head, "salvage" cylinder of 4.8 gallon capacity for overpacking damaged or leaking packages of pressurized and non-pressurized hazardous materials. (Mode 1.)
9992-N	DOT-E 9992	Pennwalt Corp., King of Prussia, PA.	49 CFR 173.365	To authorize shipment of Dithiocarbamate pesticides, solid, n.o.s., classed as Poison B, in a non-DOT bag constructed of coated woven polypropylene with a polyethylene liner bag. (Modes 1 and 3.)
9994-N	DOT-E 9994	Hoover Group, Inc., Beatrice, NE	49 CFR 178.83-7, 178.83-8	To authorize manufacture, marking and sale of non-DOT Specification stainless steel drum-type container of 55-gallon capacity, conforming to DOT Specification 5C—with certain exceptions, for shipment of those materials authorized in a DOT-5C stainless stell drum. (Mode 1.)
9996-N	DOT-E 9996	Transac, Inc., Macon, GA	49 CFR 173.154, 173.164, 173.178, 173.182, 173.217, 173.234, 173.245b, 173.366.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2,200 pounds each, and top and bottom outlets, for shipment of flammable solids, oxidizing materials, poison B solids and corrosive solids. (Modes 1 and 2.)
9998-N	DOT-E 9998	Accumulators, Inc., Houston, TX	49 CFR 173.302(a)(1), 175.3	To authorize shipment of nitrogen in hydraulic accumulators. (Modes 1, 2, 3, and 4.)
10003-N	DOT-E 10003	Hoover Group, Inc., Beatrice, NE	49 CFR 178.82	To authorize manufacture, marking and sale of non-DOT stainless steel drum-type container of 55-gallon capacity, conforming to DOT-5B with certain exceptions, for shipment of paint and resin solution, and those materials authorized in a DOT-5B removable head stainless steel drum. (Mode 1.)
10009-N	DOT-E 10009	Texaco Pipeline, Inc., Glendive, MT	49 CFR 173.119	To authorize use of a non-DOT specification container described as positive displacement meter provers, for certain flammable liquids. (Mode 1.)
10010-N	DOT-E 10010	Smith Systems, A Moorco Operation, Corpus Christi, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification container described as mechanical displacement meter provers, for transportation of flammable liquids or flammable gases. (Mode 1.)
9197-N	DOT-E 10015	Greif Bros. Corp., Springfield, NJ	49 CFR 173.247	To authorize manufacture, marking and sale of DOT Specification 34 polyethylene drums of 30- and 55-gallon capacity, for shipment of benzoyl chloride. (Modes 1, 2, and 3.)
10018-N	DOT-E 10018	Geigy Corp., Ardsley, NY	49 CFR 173.359	To authorize transport of certain Class B poison in a non-DOT specification rotationally molded polyethylene container. (Mode 1.)
10020-N	DOT-E 10020	Allwaste, Stafford, TX	49 CFR 173.245b	To authorize use of a non-DOT specification roll-on/roll-off container, for transportation of corrosive solids. (Mode 1.)
10029-N	DOT-E 10029	Thompson-Hayward Chemical Co., Kansas City, KS.	49 CFR 173.268, 177.848	To authorize transport of nitric acid (over 40%) loaded in one compartment of a compartmented DOT-MC-312 cargo tank motor vehicle, adjacent to a compartment containing corrosive materials. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10047-N	DOT-E 10047	Taylor-Wharton, Division, of Harsco Corp., Harrisburg, PA.	49 CFR 173.301(h), 173.302(a), 173.304, 173.34(a)(1), 175.3, 178.37.	To authorize manufacture, marking and sale of non-DOT specification cylinders conforming in part with DOT Specification 3AA cylinders, for transportation of certain hazardous materials. (Modes 1, 2, 3, and 4.)
10049-N	DOT-E 10049	Martin Gas Sales, Inc., Kilgore, TX	49 CFR 173.318, 173.320, 173.338, 177.840.	To authorize use of a polyurethane insulated cargo tank conforming with MC-338 built prior to 1984. (Mode 1.)
10052-N	DOT-E 10052	Hilti—Ciba-Geigy, Construction Chemical, Tulsa, OK.	49 CFR 173.1200(a)(8), 173.305(c), 173.306(a)(3), 175.3, 178.33a.	To authorize transport of certain hazardous materials in a nonrefillable non-DOT specification inside metal container conforming with DOT Specification 2Q except for size and marking. (Modes 1 and 4.)
9942-N	DOT-E 10085	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.384, 173.3a, 177.841(b).	To authorize shipment of monochloroacetone, inhibited, in a DOT Specification MC-312 cargo tank with no bottom outlets. (Mode 1.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of Exemption Thereof
EE 3095-X	DOT-E 3095	Dowell Schlumberger, Inc., Tulsa, OK.	49 CFR 173.119(a), 173.245(a), 173.248(a), 173.263(a), 173.264, 173.283, 173.289, 178.342-5, 178.343-5.	To authorize use of a non-DOT specification cargo tank, for shipment of certain hazardous materials. (Modes 1 and 3.)
EE 4698-X	DOT-E 4698	United Technologies Automotive Group, Howe, IN.	49 CFR 173.302(a)(1), 175.3	To authorize use of non-DOT specification hydraulic accumulators, for shipment of a certain nonflammable compressed gas. (Modes 1, 2, 3, and 4.)
EE 6296-X	DOT-E 6296	Platte Chemical Co., Greeley, CO	49 CFR 173.377(g)	To authorize additional bag packagings, for transportation of certain Class B poisons in DOT Specification 44D multi-wall paper bags. (Modes 1 and 2.)
EE 6418-X	DOT-E 6418	Cenex/Land O'Lakes AG Services, Vancouver, WA.	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310 or MC-312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1.)
EE 7052-X	DOT-E 7052	Maxwell Corp. of America, Fair Lawn, NJ.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
EE 7052-P	DOT-E 7052	Tracor Aerospace, Inc., Austin, TX	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, and 4.)
EE 7891-X	DOT-E 7891	Spectrum Chemical Manufacturing Corp., Gardena, CA.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, and 4.)
EE 7943-X	DOT-E 7943	Chem Lab Products, Inc., Ontario, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
EE 8009-X	DOT-E 8009	Pressure Transport, Inc., Austin, TX.	49 CFR 173.301(d)(2), 173.302(a)(3).	To authorize use of DOT Specification 3AAX cylinders made of 4130X steel, for transportation of a compressed natural gas. (Mode 1.)
EE 8445-X	DOT-E 8445	Aqua-Tech, Inc., Port Washington, WI.	49 CFR Part 173, Subpart D, E, F, and H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
EE 8445-X	DOT-E 8445	Aqua-Tech, Inc., Port Washington, WI.	49 CFR Part 173, Subpart D, E, F, and H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
EE 8445-X	DOT-E 8445	Aqua-Tech, Inc., Port Washington, WI.	49 CFR Part 173, Subpart D, E, F, and H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
EE 8451-P	DOT-E 8451	Battelle Columbus Division, Columbus, OH.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, and 4.)
EE 8526-X	DOT-E 8526	Birko Corp., Westminster, CO	49 CFR 177.834(L)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment. (Mode 1.)
EE 8526-X	DOT-E 8526	North Star Transport, Inc., St. Paul, MN.	49 CFR 177.834(L)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment. (Mode 1.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of Exemption Thereof
EE 8717-X	DOT-E 8717	Goodloe, E. Moore, Inc., Danville, IL.	49 CFR 173.28(m)	To authorize reuse of DOT Specification 17H steel drums of 55-gallon capacity, with an inside polyethylene liner of 0.010 inch minimum thickness, for shipment of certain adhesives, classed as a flammable liquid. (Mode 1.)
EE 8723-X	DOT-E 8723	Explosives Engineers, Inc., Sparks, MD.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1 and 3.)
EE 8747-X	DOT-E 8747	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined 28/26 gauge DOT Specification 37C80 steel drum of five gallon capacity. (Modes 1, 2, 3, and 4.)
EE 8747-X	DOT-E 8747	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined 28/26 gauge DOT Specification 37C80 steel drum of five gallon capacity. (Modes 1, 2, 3, and 4.)
EE 8885-X	DOT-E 8885	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined tin can, overpacked in a non-DOT specification removable head molded polyethylene pail of five or six-gallon capacity, also containing a nonhazard ous resin mix. (Modes 1, 2, 3, and 4.)
EE 8885-X	DOT-E 8885	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined tin can, overpacked in a non-DOT specification removable head molded polyethylene pail of five or six-gallon capacity, also containing a nonhazard ous resin mix. (Modes 1, 2, 3, and 4.)
EE 9319-X	DOT-E 9319	W. R. Grace & Co., Dearborn Division, Lake Zurich, IL.	49 CFR 173.245(a)(38)	To authorize DOT Specification 57 Type 304 or 316 stainless steel portable tanks, for water treatment compounds or boiler compounds, liquid that are not alkaline. (Modes 1 and 2.)
EE 9331-X	DOT-E 9331	Rio Linda Chemical Co., Sacramento, CA.	49 CFR 173.263(a)(10)	To authorize shipment of sodium chlorite solutions, in DOT Specification MC-306 and MC-307 cargo tanks. (Mode 1.)
EE 10067-N	DOT-E 10067	U.S. Dept. of Energy, Washington, DC.	49 CFR 173.276	To authorize use of non-DOT specification packagings for transportation of anhydrous hydrazine. (Modes 1 and 4.)
EE 10067-P	DOT-E 10067	Hamilton Standard, Div. of United Technologies, Windsor Locks, CT.	49 CFR 173.276	To become a party to exemption 10067 (Modes 1 and 4.)
EE 10076-N	DOT-E 10076	Southern Air Transport, Miami, FL	49 CFR 172.101 Table, Column 6B, 175.30.	To authorize shipment of rocket ammunition with explosive projectile, Class A explosive, which is forbidden for transportation by air. (Mode 4.)
EE 10079-N	DOT-E 10079	Belgium International Air Carriers, Brussels, Belgium.	49 CFR 172.101	To authorize transport of propellant explosive, solid, Class B explosive which exceeds the weight limitation authorized for cargo aircraft. (Mode 4.)
EE 10080-N	DOT-E 10080	British Aerospace Public Limited Co., Hertfordshire, England.	49 CFR 172.101 Column (6)(b), 175.3, 175.320(a).	To authorize transport of Class A and B explosives aboard cargo aircraft. (Mode 4.)
EE 10081-N	DOT-E 10081	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.92	To authorize transport of rocket motors via highway. (Mode 1.)
EE 10083-N	DOT-E 10083	Dow Chemical Co., Sarnia, Ontario, Canada.	49 CFR 173.29(c), 179.100-15, 179.102-2.	To authorize a one time shipment of chlorine in a DOT Specification 105A500W tank car tank with a defective safety valve equipped with a chlorine "C" kit. (Mode 2.)
EE 10098-N	DOT-E 10098	McDonnell Douglas Astronautics Co., Titusville, FL.	49 CFR 172.101 Table, column 6b, 175.30.	To authorize a one time shipment, by cargo aircraft, of a Class A explosive, which is forbidden for transportation by air. (Mode 4.)
EE 10100-N	DOT-E 10100	Dow Chemical Co., Midland, MI	49 CFR 173.369	To authorize transport of carbolic acid (phenol) in a DOT Specification 111A100W6 tank car tank. (Mode 2.)
EE 10100-P	DOT-E 10100	Tennessee Eastman Co., Kingsport, TN.	49 CFR 173.369	To become a party to exemption 10100. (Mode 2.)
EE 10100-P	DOT-E 10100	Arkansas Eastman Co., Batesville, AR.	49 CFR 173.369	To become a party to exemption 10100. (Mode 2.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6695-X	Atochem, Paris, France	49 CFR 173.315	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3.)
6932-X	Atochem, Paris, France	49 CFR 173.264(b)(4)	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of anhydrous hydrofluoric acid. (Modes 1, 3.)
7052-X	Moli Energy, Limited, Burnaby, B.C., Canada.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4.)
7285-X	Atochem, Paris, France	49 CFR 173.315(a)	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain nonflammable, liquefied gases. (Modes 1, 2, 3.)

WITHDRAWAL EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8141-X	Whittaker-Yardney Power Systems, Waltham, MA.	49 CFR 172.101, 173.206, 173.247	To authorize transport of individual cells and modules consisting of three cells containing lithium metal and thionyl chloride in non-DOT specification wooden boxes. (Modes 1, 3.)
8308-X	Customized Transportation, Inc., Jacksonville, FL.	49 CFR 177.842(a), 177.842(b)	To authorize carriage of non-fissile radioactive materials packages via motor vehicles when their combined transport index exceeds 50 and/or the separation distance criteria cannot be met. (Mode 1.)
9144-P	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.154, 173.164, 173.178, 173.182, 173.234, 173.245b.	To become a party to exemption 9144 (Modes 1, 2, 3.)
9220-P	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.182, 173.217, 173.245b	To become a party to exemption 9220 (Modes 1, 2, 3.)
9367-P	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.182, 173.217, 173.245b	To become a party to exemption 9367 (Modes 1, 2, 3.)
9533-P	IRECO, Incorporated, Salt Lake City, UT.	49 CFR Part 173 Subpart E, F	To become a party to exemption 9533 (Modes 1, 2, 3.)
9701-P	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.154, 173.164, 173.178, 173.182, 173.245b.	To become a party to exemption 9701 (Modes 1, 2, 3.)
9713-P	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.154, 173.182, 173.217, 173.245b.	To become a party to exemption 9713 (Modes 1, 2, 3.)
9783-P	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.154, 173.164, 173.178, 173.182, 173.217, 173.234, 173.245b, 173.366.	To become a prty to exemption 9783 (Modes 1, 2.)
9806-P	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.182, 173.217, 173.245b	To become a party to exemption 9806 (Modes 1, 2, 3.)
9848-P	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.302	To become a party to exemption 9848 (Modes 1, 2.)
9982-N	SST Industries, Inc., Dekalit Plastics Division, Cincinnati, OH.	49 CFR 178.19, Part 173, Subparts D, E, F, and H.	To authorize manufacture, marking and sale of non-DOT Specification polyethylene packaging, similar to DOT Specification 34, for shipment of materials authorized in DOT Specification 34 polyethylene drums. (Modes 1, 2, 3.)
10034-N	Aerojet Solid Propulsion Company, Sacramento, CA.	49 CFR 173.239a(a)(2)	To authorize a one-time shipment of 200 non-DOT Specification tote bins containing ammonium perchlorate classed as an oxidizer. (Modes 1, 2.)

Denials

6810-X Request by L & V Industrial Supply Inc. San Marcos, CA to authorize shipment of a nonliquefied, nonflammable compressed gas in seamless steel tanks (tubes) made in compliance with DOT 107A except they are not mounted on a rail car denied November 18, 1988.

7803-P Request by Rocky Mountain Pro Clean Inc. Denver, CO to authorize manufacture, marking and sale of non-DOT specification removable head polyethylene drums, for shipment of corrosive liquids and flammable liquids denied December 12, 1988.

8978-X Request by Battery Engineering, Inc. Hyde Park, MA to authorize transport of lithium cells containing more than 12 but not more than 50 grams of lithium metal, in non-DOT specification, non-reusable, open head, steel drums denied December 21, 1988.

9348-X Request by DURACELL, Inc. Bethel, CT to authorize transport of a limited number of certain lithium batteries on passenger carrying aircraft denied December 28, 1988.

9533-P Request by Sacramento Air Logistics Center McClellan Air Force Base, CA to authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2260 pounds each, and top and bottom outlets, for shipment of poison B solid, corrosive solids and oxidizers (solids only) denied December 2, 1988.

9942-N Request by E.I. du Pont de Nemours & Company, Inc. Wilmington, DE to authorize shipment of nitrogen padded, unstabilized monochloroacetone with a proposed description of Poison liquid, n.o.s. classed as Poison B in DOT Specification Mc-312 cargo tanks denied October 18, 1988.

Termination

9829-N Request by TORA Express, Inc. Monroe, LA to authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air terminated December 5, 1988.

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

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-11876 Filed 5-18-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 15, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0138
Form Number: 2063
Type of Review: Extension
Title: U.S. Departing Alien Income Tax Statement
Description: Form 2063 is used by a departing resident alien against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from

United States sources, to certify that they have satisfied all U.S. income tax obligations. The data is used by IRS to certify that departing aliens have complied with U.S. income tax laws.
Respondents: Individuals or households
Estimated Number of Respondents: 20,540
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping: 7 minutes
Learning about the law of the form: 2 minutes
Preparing the form: 32 minutes
Copying, assembling, and sending the form to IRS: 14 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting Burden: 18,691 hours
OMB Number: 1545–0714
Form Number: 8027 and 8027–T
Type of Review: Extension
Title: Employer's Annual Information Return of Tip Income and Allocated Tips; Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tip
Description: To help IRS in its examination of returns filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips reported by employees, and in certain cases, the employer must allocate tips to certain employees.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions
Estimated Number of Respondents: 52,050
Estimated Burden Hours Per Response/ Recordkeeping:

	8027	8027–T
Recordkeeping	5 hrs. 16 mins.	43 mins.
Learning about the law of the form.	35 mins	22 mins.
Preparing and sending the form to IRS.	43 mins	1 hr. 36 mins.

Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 328,865 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 89–12046 Filed 5–18–89; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 8, 1989.
By direction of the Secretary.

Frank E. Lalley,
Director, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration
2. Statement of Person Claiming to Have Stood in Relation of Parent
3. VA Form 21–524
4. This form is used to gather information about the relationship of the claimant to the veteran in claims for Parents Dependency and Indemnity Compensation.
5. On occasion.
6. Individuals or households.
7. 2,000 responses.
8. 2 hours.
9. Not applicable.

Extension

1. Veterans Benefits Administration
2. Request for Identifying Information Re: Veteran's Loan Records
3. VA Form Letter 26–626
4. This form letter is used to notify a correspondent that additional information is needed in order to identify and associate their previous correspondence with the correct veteran's loan application or records.
5. On occasion.
6. Individual or households.
7. 2,400 responses.
8. 1/12 hour.
9. Not applicable.

Extension

1. Veterans Benefits Administration
2. Compliance Report of Proprietary Institutions
3. VA Form 27–4274
4. This form is needed to collect statistical information from propreitary schools which receive Federal assistance from the DVA and ED, to determine compliance with applicable civil rights statutes and regulations.
5. On occasion.
6. Non-profit institutions/small businesses or organizations.
7. 295 responses.
8. 1 hour.
9. Not applicable.

[FR Doc. 89–11987 Filed 5–18–89; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 96
Friday, May 19, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:33 a.m. on Monday, May 15, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a matter relating to the Corporation's assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act with an insured bank.

In calling the meeting, the Board determined, on motion of director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 16, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-12149 Filed 5-17-89; 11:01 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:30 a.m. on Tuesday, May 16, 1989, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of West Alabama Bank & Trust, Reform, Alabama, for consent to purchase certain assets of and assume the liability to pay the deposits made in First State Bank of Carrollton, Alabama, Carrollton, Alabama, and for consent to establish the sole office of First State Bank of Carrollton, Alabama as a branch of West Alabama Bank & Trust.

Application of Westcoast Thrift and Loan Company, a proposed new industrial bank to be located at 299 West Hillcrest Drive, Suite 100, Thousand Oaks, California, for Federal deposit insurance.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of matters relating to certain of the Corporation's assistance agreements pursuant to section 13[c] of the Federal Deposit Insurance Act.

The Board also determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(2), (c)(4) (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 16, 1989.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-12209 Filed 5-17-89; 1:06 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., May 25, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review of Laws, Regulations and Policies of Taiwan Affecting Shipping in the United States/Taiwan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89-12255 Filed 5-17-89; 4:03 pm]

BILLING CODE 6730-01-M

Corrections

Federal Register
Vol. 54, No. 96
Friday, May 19, 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 COMMERCE

International Trade Administration

[A-588-019]

Cyanuric Acid and Its Chlorinated Derivatives From Japan; Preliminary Results of Antidumping Administrative Reviews and Tentative Determination To Revoke in Part

Correction

In notice document 88-26867 beginning on page 46896 in the issue of Monday, November 21, 1988, make the following correction:

On page 46897, the table was inaccurate and should appear as follows:

Manufacturer Exporter	Product	Time Period	Margin (Percent)
Nissan Chemical Industries, Ltd.[1]	Dichloro Isocyanurates.	4/85 -3/87	0
	Trichloro Isocyanuric Acid.	4/85-3/87	0
Shikoku Chemicals Corporation.	Cyanuric Acid.	4/85-3/86	2.58
		4/86-3/87	11.77
	Dichloro Isocyanurates.	4/85-3/86	0.01
		4/86-3/87	0.01
	Trichloro Isocyanuric Acid.	4/85-3/86	0.09
		4/86-3/87	0.08

[1]The order on cyanuric acid excludes sales produced by Nissan

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 169

[DoD Directive 4100.15]

Commercial Activities Program

Correction

In rule document 89-7769 beginning on page 13373 in the issue of Monday, April 3, 1989, make the following correction:

On page 13375, in the second column, in § 169.4(e), in the seventh line, "facilities" should read "facilitate".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

34 CFR Part 81

General Education Provisions Act; Enforcement

Correction

In rule document 89-10874 beginning on page 19512 in the issue of Friday, May 5, 1989, make the following corrections:

1. On page 19512, in the third column, under **SUBPART B-HEARINGS FOR RECOVERY FUNDS**, in the fifth line, insert "a" between "of" and "disallowance".

§ 81.32 [Corrected]

2. On page 19517, in the second column, in § 81.32(d)(2), in the last line, "side" should read "aside".

§ 31.33 [Corrected]

3. On the same page, in the third column, in § 81.33, in the authority citation, in the last line, "12321e3(a)(1)" should read "1221e-3(a)(1)".

4. On page 19520, in the 3rd column, under *Section 81.22 Proportionality*, in the 1st paragraph, in the 12th line, "test" should read "text".

5. On page 19521, in the second column, *Example* #12, in the ninth line, "identifiable" was misspelled.

6. On the same page, in the same column, in the *Comment* paragraph, in the 12th line, "for" should read "from".

7. On page 19522, in the first column, in the *Comment* paragraph, in the second line, "challenges" should read "changes".

8. On the same page, in the same column, in the same paragraph, in the third line, "changes" should read "challenges".

Note: For a Department of Education correction to the document cited in this correction, see the rules section of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of Intergovernmental and Interagency Affairs

Procedure for Requesting Authoritative Guidance Under Part E of the General Education Provisions Act

Correction

In notice document 89-10875 appearing on page 19523 in the issue of Friday, May 5, 1989, make the following correction:

In the second column, in the list of officials, in the second line, insert a comma between "Management" and "Comptroller".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Meeting

Correction

In notice document 89-10811 appearing on page 19464 in the issue of Friday, May 5, 1989, make the following corrections:

1. In the second column, remove lines 30 through 54.

2. In the third column, the 11th through 14th lines should read as follows:

"*Closed:* June 22, 8:30 a.m.—recess; June 23, 8 a.m.—recess; June 24, 8 a.m.—adjournment"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffice Safety Administration

49 CFR Parts 564 and 571

[Docket No. 85-15; Notice 7]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment; Replaceable Light Source Dimensional Information

Correction

In proposed rule document 89-10443 beginning on page 20084 in the issue of Tuesday, May 9, 1989, in the heading, the notice number was incorrect and should appear as set forth above.

BILLING CODE 1505-01-D

federal register

Friday
May 19, 1989

Part II

Department of Education

34 CFR Part 75 et al.

Chapter 1 Program in Local Educational Agencies; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, 77, 78, 200, and 204

Chapter 1 Program in Local Educational Agencies

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The U.S. Secretary of Education (Secretary) issues final regulations implementing Part A of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, which provides financial assistance through State educational agencies (SEAs) to local educational agencies (LEAs) to meet the special educational needs of educationally deprived children in school attendance areas with high concentrations of children from low-income families and of children in local institutions for neglected or delinquent children. Part A also provides assistance to the U.S. Secretary of the Interior to meet the special educational needs of educationally deprived Indian children. In implementing Part A of Chapter 1, the Secretary makes applicable appropriate portions of the Education Department General Administrative Regulations (EDGAR). Accordingly, the Secretary makes changes to 34 CFR Part 76 (State-Administered Programs) and Part 78 (Education Appeal Board). The Secretary also amends Part 76 and 34 CFR Part 75 (Direct Grant Programs). Finally, the Secretary removes 34 CFR Part 204 because it is no longer needed.

EFFECTIVE DATES: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 200.20, 200.30, 200.35 through 200.38, 200.43, 200.57, 200.82 through 200.84, and 200.87. Sections 200.20, 200.30, 200.35 through 200.38, 200.43, 200.57, 200.82 through 200.84, and 200.87 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The statutory provisions that these regulatory sections implement, however, are effective by their own terms. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Ogura, Chief, Program Policy Branch, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202–6132. Telephone: (202) 732–4701.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1988, the President signed into law the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297. Principal themes of this new legislation are to promote access to quality education for educationally deprived students and excellence in education for the Nation as a whole. In keeping with these themes, Title I of the Hawkins-Stafford Act amends the Elementary and Secondary Education Act of 1965 (ESEA) (the Act) to include a number of new and reauthorized Federal education programs. One of these programs is Chapter 1 of Title I of the ESEA, which reauthorizes programs previously contained in Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). Part A of Chapter 1, which is implemented by these final regulations, provides financial assistance through SEAs to LEAs to meet the special educational needs of educationally deprived children in school attendance areas with high concentrations of children from low-income families and of children in local institutions for neglected or delinquent children. This assistance is to improve the educational opportunities of educationally deprived children by helping these children succeed in the regular program, attain grade-level proficiency, and improve achievement in basic and more advanced skills. Part A of Chapter 1 also provides financial assistance to the U.S. Secretary of the Interior to meet the special educational needs of educationally deprived Indian children.

On October 21, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (53 FR 41466–41492). The preamble to the NPRM included a discussion of the provisions enacted by the Congress to strengthen and improve the program. The preamble also included a summary of the results of the regional meetings and modified negotiated rulemaking process the Secretary implemented as a result of the requirements of section 1431(b) of the Act. In developing proposed regulations for the targeting of school attendance areas and students, schoolwide projects, parental involvement, program improvement, State administration, and national evaluation standards, the Secretary considered the comments and recommendations of participants in the regional meetings and the modified negotiated rulemaking process. The preamble also included a summary of other significant changes resulting from reauthorization.

Major Changes from the NPRM

In response to the Secretary's invitation in the NPRM, 453 letters were received from State and local educational agency officials, teachers, organizations, and Members of Congress. In general, the comments addressed significant issues on the requirements for planning, designing, implementing, and evaluating programs and projects under this part. Many commenters attempted to seek changes from a local, a State, or an interest group perspective. Comments clustered around the issues addressed in the regional meetings and the negotiated rulemaking demonstration, including issues that did not result in concensus by the negotiating group. In issues were complex and could not be decided easily. The final regulations, therefore, represent the Secretary's attempt to balance the concerns of States, local school officals, and the varous interest groups against the statutory purposes for the program and the needs of the children to be served. The following sections provide a brief summary of the final regulations that are significantly different from the NPRM:

What Definitions Apply to the Chapter 1 LEA Program? (§ 200.6)

The Secretary received a number of comments concerning the proposed definition of "in loco parentis," particularly the provision concerning the designation of persons to act in place of the parent or legal guardian. Some commenters believed that all persons standing "in loco parentis" had to be designated to do so by a parent or legal guardian; others wanted that designation to be in writing. Section 200.6(c) revises the definition of "in loco parentis" to make clear that a person standing in place of parent may be either a person with whom a child lives or a person who has been designated by a parent or legal guardian to act in place of the parent or legal guardian regarding all aspects of the child's education. The intent of this provision is to identify the person most responsible for the overall education of the child. Typically, this person would be the person with whom the child lives and need not be designated. However, in some instances, the parent or legal guardian may wish another person to be responsible for the

child's education, including the Chapter 1 LEA Program. This person must be designated by the parent or legal guardian. However, it is not the intent of the regulations that the designation of a person "in loco parentis" be for the Chapter 1 LEA Program only, with the parent or legal guardian retaining parental authority in regard to the regular program of instruction in the school. The regulations do not require that this designation be in writing. Rather, the general practices of an LEA would govern whether the designation of a person standing "in loco parentis" must be in writing.

How Does an LEA apply for a Subgrant? (§ 200.20)

There are three major changes concerning the contents of an LEA's application for funds. First, the proposed regulations required that an LEA's application include data showing that the LEA maintained fiscal effort in accordance with § 200.41. In response to a number of comments received, § 200.20(a)(7) has been revised to require the data only if the appropriate expenditure information is not already available to the SEA.

Second, the proposed regulations required that an application include an assurance that the LEA is in compliance with the comparability of services requirements in § 200.43(c)(1)(i) and a copy of the LEA's salary schedule and policies required by that provision. In response to comments on these requirements, § 200.20(a)(8) has been revised to delete the requirement that the LEA's salary schedule and policies be included in the application. In addition, the assurance concerning comparability of services is only required of those LEAs that elect to file a written assurance rather than establishing and implementing other measures of comparable services.

Third, the proposed regulations required that an application include an assurance that the LEA's Chapter 1 projects provide for the allocation of time and resources for coordination of the Chapter 1 curriculum with the regular instructional program. In response to public comment, § 200.20(a)(10)(i)(D) has been revised to clarify that the coordination is between Chapter 1 staff and regular staff to ensure that both the Chapter 1 and regular instructional programs meet the special educational needs of Chapter 1 children.

How Does an LEA Identify and Select Children to Participate? (§ 200.31)

Section 200.31(b)(1) of the proposed regulations required that an LEA conduct an annual needs assessment that identifies educationally deprived children in all eligible attendance areas, including educationally deprived children in private schools. Section 200.31(b)(2) of the proposed regulations also required that the LEA identify the general instructional areas on which the program will focus. The final regulations have been revised to clarify that an LEA must identify general instructional areas and grade levels on which the program will focus on the basis of information on needs gathered by identifying all educationally deprived children, including those children in private schools, in eligible areas. Further, § 200.31(b)(2) has been modified to indicate that instructional areas and grade levels served may vary among and within school attendance areas if the needs assessment data support differing instructional areas and grades.

What are the Requirements for Evaluating and Reporting Project Results? (§ 200.35)

The proposed regulations permitted an SEA to require that an LEA's evaluation include an assessment of the effect of Chapter 1 projects on children's achievement in the regular program, including writing, science, history, or other subjects. In response to public comment, the provision has been deleted from § 200.35(b). However, § 200.35(a)(1)(ii) has been added to clarify that an LEA must include in its evaluation a review of Chapter 1 children's progress in the regular program. The review may be based on teacher judgments, grades, retention rates, and other appropriate indicators of success. In adding this provision, the Secretary does not intend to hold the Chapter 1 LEA Program accountable for the effectiveness of the LEA's regular program. However, one of the purposes of the Chapter 1 LEA Program, as stated in section 1001(b)(1) of the Act, is to help educationally deprived children succeed in the regular program of the LEA. It is insufficient that Chapter 1 children make gains in the Chapter 1 program if those gains do not translate into improved performance in the regular program. Without reviewing Chapter 1 children's progress in the regular program, the LEA cannot truly measure the effectiveness of its Chapter 1 LEA Program.

What are the Requirements for Schoolwide Projects? (§ 200.36)

In accordance with section 1015(c)(2)(A) of the Act, the proposed regulations provided that, for each school that has a schoolwide project plan approved by the SEA, and LEA does not have to comply with any Chapter 1 requirements prohibiting the commingling of funds available under this part with State and local funds. The Secretary interprets this provision to mean that the LEA does not have to demonstrate that Chapter 1 funds benefit only educationally deprived children. In response to public comment and upon further review, the Secretary has revised § 200.36(d)(2)(i) to reflect this interpretation. The Secretary does not interpret the commingly provision in section 1015(c)(2)(A) to excuse an LEA from documenting separately that Chapter 1 funds have, in fact, been spent in a schoolwide project. Thus, § 200.36(c)(5) has been added to the final regulations to clarify that, notwithstanding § 200.36(d)(2), the LEA must keep records to document the expenditure of funds under this part in a schoolwide project. This requirement is necessary to determine the LEA's compliance with the restrictions on carryover funds § 200.46 and the period of availability of funds under section 412(b) of the General Education Provisions Act (GEPA).

What are an LEA's Responsibilities for Program Improvement? (§ 200.38)

The proposed regulations required that an SEA's and LEA's joint plan be developed and implemented by the beginning of the school year following the full year the LEA's plan was in effect. Essentially, this provision allowed, at most, only three months during the summer to develop and implement the joint plan. It allowed no time for those LEAs on a fall-to-fall testing cycle. Thus, in response to numerous comments expressing concern that the timeline in the proposed regulations was unrealistic, particularly because many staff members do not work during the summer, the Secretary has revised § 200.38(b)(6)(iii) to require a joint plan to be developed and fully implemented as soon as possible, but no later than by the beginning of the second school year following the full year during which the LEA's plan was in effect. However, the Secretary does not want this extension to result in ineffective programs continuing for another full year to the detriment of educationally deprived children. Therefore, if full implementation of a joint plan requires the maximum time allowed, § 200.38(b)(6)(iii)(B) requires the SEA and LEA to implement portions of the plan as soon as possible. A similar requirement has also been added to the LEA's plan in § 200.38(b)(5)(ii)(B).

In addition, the Secretary has added two definitions in § 200.6(c) relating to

program improvement. First, the Secretary has defined "aggregate performance" to mean student achievement, aggregated for a school as a whole, measured in accordance with the national evaluation standards in Subpart H. Concomitantly, the Secretary has revised § 200.38(b)(1)(ii) to indicate that an LEA, at a minimum, is required to determine the aggregate performance of a school in the instructional area that is the primary focus on the Chapter 1 LEA Program in that school, unless the program addresses two or more instructional areas wtih relatively equal emphasis. In those cases, the LEA must determine aggregate performance in each area. if an LEA wishes, it may determine aggregate performance in all instructional areas included in its Chapter 1 program and use the results for determining schools in need of program improvement.

Second, the Secretary has defined "desired outcomes" and has indicated that, at a minimum, and LEA's desired outcomes must be expressed in terms of aggregate performance in accordance with § 200.38(b)(1)(ii). The LEA may also establish other desired outcomes that are expressed in terms of indicators such as improved student performance measured by criterion-referenced tests, lower dropout rates, improved attendance, and fewer retentions in grade.

What Comparability of Services Requirements Apply to This Program? (§ 200.43)

The proposed regulations required that an LEA comply with the comparability of services requirements by establishing and implementing a districtwide salary schedule, a policy to ensure equivalence in staffing schools, and a policy to ensure equivalence in the provision of materials and supplies to schools. In addition, an SEA and LEA was required to establish standards to ensure that the policies actually resulted in the provision of equivalent staffing, materials, and supplies. In response to comments, the flexibility provided in the statute has been included in § 200.43(c). Specifically, an LEA has the option of eiher (1) filing a written assurance that it has established and implemented a districtwide salary schedule and policies to ensure equivalence in staffing, materials, and supplies or (2) establishing and implementing other measures such as a ratio of students per instructional staff or a ratio of instructional staff salary expenditures per student to demonstrate compliance with the comparability of services requirements. The requirement that an SEA or LEA establish standards to ensure that an LEA's policies result in the provision of equivalent staffing, materials, and supplies among schools has been deleted. However, § 200.43(d) and § 200.43(e) require an LEA to develop written procedures to ensure compliance and to maintain annual records documenting compliance with the comparability of services requirements. The requirement in § 200.21(a)(3) of the proposed regulations that an SEA had to determine, in aproving an LEA's application, that the LEA's salary schedule and policies, if implemented, would result in compliance with the comparability requirements has also been deleted. However, the SEA is required under § 200.43(f)(1) to monitor each LEA's compliance with the comparability requirements, and the SEA remains ultimately responsible for violations of those requirements.

Does a State Have Authority to Issue State Regulations for the Chapter 1 LEA Program? (§ 200.70)

The final regulations make a number of changes to the provisions concerning the committee of practitioners in § 200.70(e). Section 1451(b) of the Act requires review by a State committee of practitioners "[b]efore publication of any proposed or final State rule or regulation." The proposed regulations attempted to minimize any burden caused by this provision by only requiring review by the committee of practitioners before publication of either a proposed rule, if State law required issuance of proposed rules, or a final rule, if no proposed rule was required. Moreover, the proposed regulations did not require an SEA to convene the committee except after the issuance of an emergency rule where review prior to publication was not possible.

On the basis of the comments received and upon reconsideration, the Secretary has revised § 200.70(e) to require that a State convene the State committee or practitioners to review before publication any major proposed or final rule or regulation. The State must also ensure that any other rules or regulations be reviewed by the committee but not necessarily in a meeting. In addition, if a State does not issue rules or regulations relating to the Chapter 1 LEA Program but issues policies that the SEA and LEAs must follow, the State must comply with the consultation requirements for issuing rules and regulations in § 200.70(e).

What Complaint Procedures Must an SEA Adopt? (§ 200.72)

Section 200.72 of the proposed regulations contained requirements concerning complaint procedures that each SEA would have to adopt. Those regulations were developed, in part, in response to Congress' suggestion in the Conference Report accompanying the Act that the Secretary "issue amended regulations making 34 CFR 76.780–76.783 applicable to Chapter 1." *See* H.R. Rept. 567, 100th Cong., 2d Sess. 341 (1978). However, subsequent to enactment of the Act but before the proposed Chapter 1 regulations were published, the Secretary published an NPRM proposing changes to the Education Department General Administrative Regulations (EDGAR). *See* 53 FR 31580 (Aug. 18, 1988). One of those proposed changes was the removal of the general complaint procedures in 34 CFR 76.780–76.782 of EDGAR and the transfer of those procedures to the regulations implementing Part B of the Education of the Handicapped Act, which had shown the greatest need for the complaint procedures. As a result, the Secretary proposed separate Chapter 1 complaint procedures. In response to comments on the EDGAR NPRM, the Secretary is reconsidering whether to remove the complaint procedures from EDGAR. Because this issue has not yet been resolved, the Secretary has decided on an interim basis to make the general complaint procedures from EDGAR applicable to the Chapter 1 LEA Program. For the convenience of SEAs, LEAs, and other interested parties, the procedures are included in §§ 200.73–200.75. However, paragraphs (b) and (c) of § 76.780 are not included as the statutory references are no longer appropriate. In addition, the acronyms "SEA" and "LEA" replace the terms "State" and "subgrantee" to be consistent with the remaining regulations under this part. Comments received on the proposed Chapter 1 complaint procedures will be given additional consideration in whatever final action the Secretary takes regarding the EDGAR complaint procedures.

How Does an LEA Evaluate Student Achievement? (§ 200.80)

Both the proposed regulations and § 200.80(b)(2) of these final regulations require that an LEA report achievement data on either a spring-to-spring or fall-to-fall testing interval. In response to many comments received, § 200.80(b)(2) has been revised to allow an LEA that measured students on a fall-spring testing interval during the 1988–89 school year to continue to do so for one more year (the 1989–90 school year) if the SEA determines that implementation of the annual cycle in 1989–90 would

impose a substantial hardship on the LEA.

Applicability of EDGAR

In order to provide additional guidance and to ensure that Chapter 1 funds are spent only for authorized program purposes, the Secretary proposed to make certain provisions of EDGAR applicable to programs under this part. Several comments were received on this proposal, most of which supported the applicability of EDGAR. As a result, the final regulations apply selected provisions of EDGAR to programs under this part.

In determining which provisions to apply, the Secretary carefully balanced the need for basic program accountability with the important principle of minimum Federal interference in State and local affairs. In particular, the final regulations allow States to use their own procedures to ensure accountability with respect to matters governed by two Office of Management and Budget (OMB) circulars: A–102 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), currently codified for programs of the Department of Education in 34 CFR Part 80; and A–87 (Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments) as amended on January 28, 1981. Only if a State chooses not to apply its own procedures would the provisions in these circulars apply to the Chapter 1 LEA Program.

If a State wishes to use its own procedures instead of the two OMB circulars implemented in EDGAR, the final regulations require that the State's procedures meet three general criteria, set forth in § 200.5(a)(4) (i)–(iii), that are designed to ensure the minimal standards necessary for proper management of Chapter 1 funds. A State may adopt new procedures, or may use accountability procedures applicable to the use of its own funds, if those procedures meet the general criteria. The State's procedures do not have to be submitted to the Secretary for approval, but must be available for Federal inspection. If a State does not have its own written requirements implemented by July 1, 1989, but wishes to develop them, the requirements in Part 80 apply until such time as the State's written requirements are adopted. In the event a State's requirements are determined to be insufficient, the enforcement provisions in Part E of GEPA apply, including the due process provisions in that part. During the transition period provided for in section 1491(c) of the Act, a State may continue to comply with the requirements under Chapter 1 of the ECIA.

The Secretary wishes to emphasize that States have complete discretion, subject to meeting the general criteria set forth in § 200.5(a)(4) (i)–(iii), to use their own procedures instead of the procedures in the two OMB circulars. Moreover, Circular A–102 has recently been revised to permit States to apply their own procedures to LEAs. As a result, even if a State chooses to adopt the procedures in that circular, it would still have considerable flexibility in determining the appropriate standards for accountability at the local level. Circular A–87 is currently being revised.

In addition, the final regulations make applicable a limited number of provisions in Part 76 (State-Administered Programs); Part 77 (Definitions That Apply to Department Regulations); Part 78 (Education Appeal Board); and Part 81 (General Education Provisions Act—Enforcement). The Secretary believes these minimal requirements will help to ensure basic accountability without imposing undue burden and paperwork on SEAs and LEAs.

Several of the applicable provisions in Part 76 contain cross-references to 34 CFR Part 74, which was superseded by Part 80 on October 1, 1988 with respect to State and local governments. Under § 200.5(a)(4), a State may decide to adopt its own written fiscal and administrative requirements, rather than following those in Part 80. The outdated cross-references to Part 74 (now Part 80) in Part 76 are not intended to make any provisions of Part 80 applicable to programs under this part that a State has not, on its own, decided to apply.

Procedures for Bypass

Under a number of elementary and secondary education programs reauthorized by the Hawkins-Stafford Act—namely, Chapters 1 and 2 of Title I of the ESEA, as amended, the Dwight D. Eisenhower Mathematics and Science Education Act, and Part B of the Drug-Free Schools and Communities Act of 1986—the Secretary is authorized to waive the requirements for providing services to private school children and to implement a bypass. Rather than repeating the same procedures in a number of sets of regulations, the Secretary adds procedures for bypass in §§ 76.671–76.677 of EDGAR that apply to each program listed in § 76.670.

Cooperation with Audits

These regulations include two new sections concerning cooperation with audits that are added to parts 75 and 76 of EDGAR, respectively. These sections make clear that grantees and subgrantees must cooperate with the Secretary and the Comptroller General of the United States or their authorized representatives in the conduct of audits. The language in Parts 75 and 76 makes clear that a grantee's or subgrantee's obligation to cooperate with audits means not imposing unreasonable restrictions on access to records and personnel.

Removal of Part 204

Part 204, which contained general definitions and administrative, project, fiscal, and due process requirements for all Chapter 1 programs is removed. All common requirements are either in applicable EDGAR provisions or are included in the regulations implementing each specific Chapter 1 program, thereby reducing the number of documents with which an SEA or LEA must deal.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 453 parties submitted comments on the proposed regulations. An analysis of the comments and of the Secretary's responses to those comments is published as an appendix to these final regulations. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes and some suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

Executive Order 12291

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

Executive Order 12606

The Secretary certifies that these regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being. To the contrary, the Chapter 1 LEA Program supports and strengthens the family by containing strong parental involvement requirements. Specifically, an LEA must develop, in coordination with parents of participating children, programs, activities, and procedures to: Inform parents about the Chapter 1 LEA Program; support the efforts of parents, including training parents, to work with

their children at home; train teachers and other staff to work effectively with parents; consult with parents on an ongoing basis; and provide opportunities for the full participation of parents who lack literacy skills or whose native language is not English. Funds received under this part may be used to support these activities.

List of Subjects

34 CFR Part 200

Administrative paractice and procedure, Education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Neglected, Private schools, Reporting and recordkeeping requirements, State-administered programs.

34 CFR Parts 75, 76, 77 and 204

Education.

Dated: May 12, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.010, Chapter 1 Program in Local Educational Agencies; 84.012, Chapter 1 Program—State Administration)

The Secretary amends parts 75, 76, 77, 78, and 204 and revises Part 200 of Title 34 of the Code of Federal Regulations as follows:

1. Part 200 is revised to read as follows:

PART 200—CHAPTER 1 PROGRAM IN LOCAL EDUCATIONAL AGENCIES

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Authority: 20 U.S.C. 2701–2731, 2821–2838, 2851–2854, 2891–2901, unless otherwise noted.

Subpart A—General

§ 200.1 What is the Chapter 1 Program in Local Educational Agencies?

(a) Under the Chapter 1 Program in Local Educational Agencies (LEAs)—referred to in this part as the Chapter 1 LEA Program—the Secretary provides Federal financial assistance for projects designed to meet the special educational needs of—

(1) Educationally deprived children in LEAs;

(2) Children in local institutions for neglected or delinquent children, including children in local correctional institutions; and

(3) Educationally deprived Indian children under section 1005(d) of the Act.

(b)(1) The purpose of assistance under this part is to improve the educational opportunities of educationally deprived children by helping these children—

(i) Succeed in the regular program of the LEA;

(ii) Attain grade-level proficiency; and

(iii) Improve achievement in basic and more advanced skills.

(2) The purpose is accomplished through means such as supplemental education programs, schoolwide programs, and the increased involvement of parents in their children's education.

(Authority: 20 U.S.C. 2701)

§ 200.2 Who is eligible for a grant?

The Secretary provides funds under the Chapter 1 LEA Program to—

(a) States, through their respective State educational agencies (SEAs); and

(b) The Secretary of the Interior for Indian children referred to in § 200.1(a)(3).

(Authority: 20 U.S.C. 2711–2712)

§ 200.3 Who is eligible for a subgrant?

(a) *General rule.* (1) Except as provided in paragraph (d) of this section, an LEA that qualifies under paragraph (b) or (c) of this section is eligible for a subgrant under the chapter 1 LEA Program.

(2) An SEA provides two types of subgrants—basic grants and concentration grants—to qualifying LEAs.

(b) *Basic grants.* An LEA is eligible for a basic grant if—

(1) There are at least 10 children counted under section 1005(c) of the Act in the school district of the LEA; or

(2) Satisfactory data on a school district basis are not available but the school district served by the LEA is located, in whole or in part, in a county in which there are at least 10 children counted under section 1005(c) of the Act.

(c) *Concentration grants.* (1) An LEA is eligible for a concentration grant if—

(i) The LEA is eligible for a basic grant under paragraph (b) of this section;

(ii) The school district of the LEA is located, in whole or in part, in a county in which the number of children counted under section 1005(c) of the Act in the school districts of LEAs in the county in the preceding fiscal year exceeds—

(A) 6,500; or

(B) 15 percent of the total number of children aged 5 to 17, inclusive, in the school districts of LEAs in the county in the preceding fiscal year; and

(iii) The number of children counted for purposes of § 200.23 or § 200.24 in the preceding fiscal year in the school district of the LEA exceeds—

(A) 6,500; or

(B) 15 percent of the total number of children aged 5 to 17, inclusive in the school district of the LEA in the preceding fiscal year.

(2) An LEA that does not qualify for a concentration grant under paragraph (c)(1) of this section may receive a concentration grant under § 200.25(b).

(d) *Exception.* This section does not apply to Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Secretary of the Interior.

(Authority: 20 U.S.C. 2711–2712)

§ 200.4 What kind of activities may an LEA conduct?

(a) Under the Chapter 1 LEA Program, an LEA may conduct only projects that are designed to provide supplemental services to meet the special educational needs of educationally deprived children at the preschool, elementary, and secondary school levels.

(b) An LEA is encouraged to—

(1) Develop programs to assist participating children to improve achievement in basic and more advanced skills; and

(2) Consider year-round services and activities, including intensive summer school programs.

(c) Authorized activities to meet the special educational needs of educationally deprived children include—

(1) Acquisition of equipment and instructional materials;

(2) Acquisition of books and school library resources;

(3) Employment of special instructional personnel, school counselors, and other pupil services personnel;

(4) Employment and training of education aides;

(5) Payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas;

(6) Training of teachers, librarians, other instructional and pupil services personnel, and, as appropriate, early childhood education professionals;

(7) Construction, if necessary, of school facilities;

(8) Parental involvement activities;

(9) Planning for and evaluation of Chapter 1 projects; and

(10) Other allowable activities.

(d)(1) With the approval of the SEA, an LEA may use up to and including five percent of the funds the LEA receives under §§ 200.22 through 200.26 for innovation projects to promote quality in the Chapter 1 LEA Program.

(2) Innovation projects may include only the following:

(i) Notwithstanding § 200.31(a), the continuation of services to children who received Chapter 1 services in any preceding year for a period sufficient to maintain progress made during the period of their participation in the program.

(ii) Notwithstanding § 200.31(c)(1), the provision of continued services, for a period not to exceed two additional years, to children participating in a Chapter 1 project who are transferred to ineligible areas or schools as part of a desegregation plan.

(iii) Incentive payments to schools that have demonstrated significant progress and success in attaining the goals of this part.

(iv) Training of teachers paid with funds under this part and teachers and librarians paid with other funds with respect to the special educational needs of eligible children and integration of activities under this part into regular classroom programs.

(v) Programs to encourage innovative approaches to parental involvement or rewards to or expansion of exemplary parental involvement programs.

(vi) Encouraging the involvement of community and private sector resources (including fiscal resources) in meeting the needs of eligible children.

(vii) Assistance by LEAs of schools identified under § 200.38(b).

(3) Except as provided in paragraph (d)(2) (i)–(ii) of this section, the requirements of this part apply to innovation projects conducted under this section.

(Authority: 20 U.S.C. 2721)

§ 200.5 What regulations apply to the Chapter 1 LEA Program?

The following regulations apply to the Chapter 1 LEA Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 76 (State-Administered Programs) as follows:

(i) Subpart A (General), except for § 76.3 (ED general grant regulations apply to these programs).

(ii) Sections 76.125 through 76.137 (Consolidated Grant Applications for Insular Areas).

(iii) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(iv) Subpart F (What Conditions Must Be Met by the State and Its Subgrantees?), except for the following sections:

(A) Sections 76.580–76.581 (Coordination).

(B) Sections 76.650 through 76.662 (Participation of Students Enrolled in Private Schools).

(C) Section 76.684 (Day care services).

(D) Section 76.690 (Energy conservation awareness).

(v) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?), except for the following sections:

(A) Sections 76.770 through 76.772 (State Administrative Responsibilities).

(B) Section 76.780 (A State shall adopt complaint procedures).

(C) Section 76.781 (Minimum complaint procedures).

(D) Section 76.782 (An organization or individual may file a complaint).

(vi) Subpart H (What Procedures Does the Secretary Use to Get Compliance?).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 78 (Education Appeal Board).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iii) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(b) The regulations in this Part 200.

(Authority: 20 U.S.C. 2831(a))

§ 200.6 What definitions apply to the Chapter 1 LEA Program?

(a) *Definitions in the Elementary and Secondary Education Act.* The following terms used in this part are defined in section 1471 of the Act:

Average daily attendance
Construction
County
Effective schools programs
Elementary school
Equipment
Free public education
Local educational agency (LEA)
More advanced skills
Parent advisory council
Project area
Pupil services
Pupil services personnel
School facilities
Secondary school
Secretary
State
State educational agency (SEA)

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Acquisition
Application
Department
EDGAR
GEPA
Grant
Minor remodeling
Personal property
Private
Project
Public
Real property
Subgrant
Supplies

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Elementary and Secondary Education Act of 1965, as amended (ESEA).

"Aggregate performance" means educational achievement of children participating in programs under this part, aggregated for a school as a whole, measured in accordance with the national evaluation standards in Subpart H.

"Chapter 1" means Chapter 1 of Title I of the Act.

"Children" means persons—

(1) Up to age 21 who are entitled to a free public education through grade 12; or

(2) Who are of preschool age.

"Desired outcomes"—

(1) Means an LEA's goals to improve the educational opportunities of educationally deprived children to help those children—

(i) Succeed in the regular educational program of the LEA;

(ii) Attain grade-level proficiency; and

(iii) Improve achievement in basic and more advanced skills;

(2) At a minimum, must be expressed in terms of aggregate performance in accordance with § 200.38(b)(1)(ii).

(3) May also be expressed in terms of other indicators such as—

(i) Improved student performance measured by criterion-referenced tests;

(ii) Lower dropout rates;

(iii) Improved attendance; and

(iv) Fewer retentions in grades.

"ECIA" means the Education Consolidation and Improvement Act of 1981.

"Educationally deprived children" means children whose educational attainment is below the level that is appropriate for children of their age.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for recordkeeping.

"Institution for delinquent children" means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children who have been determined to be delinquent or in need of supervision.

"Institution for neglected children" means, as determined by the SEA, a public or private residential facility—other than a foster home—that is operated primarily for the care of children who have been committed to the institution—or voluntarily placed in the institution under applicable State law—because of the abandonment by, neglect by, or death of parents.

"Parent." (1) The term includes a legal guardian or other person standing in loco parentis.

(2) "In loco parentis" means a person acting in place of a parent or legal guardian, and may include a person such as a grandparent, stepparent, aunt, uncle, older sibling, or other person either—

(i) With whom a child lives; or

(ii) Who has been designated by a parent or legal guardian to act in place of the parent or legal guardian regarding all aspects of the child's education.

"Preschool children" means children who are—

(1) Below the age or grade level at which the LEA provides a free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or other educational setting.

"School attendance area." (1) This term means, in relation to a particular public school, the geographic area in which the children who are normally served by that school reside.

(2) If a child's school attendance area cannot be determined on a geographic basis, the child is considered to be in the school attendance area of the school to which the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis.

(Authority: 20 U.S.C. 2831(a), 2891)

§§ 200.7-200.9 [Reserved]

Subpart B—How Does a State Apply for and Receive a Grant?

§ 200.10 What assurances must a State submit to receive a grant?

(a) A State that wishes to receive funds under this part for projects designed to meet the special educational needs of educationally deprived children shall submit to the Secretary, through its SEA, assurances that the SEA—

(1) Will meet the requirements in section 435(b) (2) and (5) of the General Education Provisions Act (GEPA) relating to fiscal control and fund accounting procedures;

(2) Will carry out the activities in § 200.35 (evaluation) and §§ 200.37-200.38 (school program improvement);

(3) Has on file a program improvement plan that meets the requirements of § 200.37(a); and

(4) Will ensure that its LEAs comply with all applicable statutory and regulatory requirements.

(b) The assurances submitted under paragraph (a) of this section remain in effect for the duration of the SEA's participation in the Chapter 1 LEA Program.

(Authority: 20 U.S.C. 2722(a))

§§ 200.11-200.19 [Reserved]

Subpart C—How Does an LEA Apply for and Receive a Subgrant?

§ 200.20 How does an LEA apply for a subgrant?

(a) *Contents of an application.* An LEA may receive a subgrant under this part for any fiscal year if the LEA has on file with the SEA an application that contains the following:

(1) A description of the procedures to be used to conduct an annual assessment of educational needs that meets the requirements of § 200.31(b).

(2) A rank ordering of eligible school attendance areas, including the identification of project areas and the basis for the selection of each project area.

(3) A description of the Chapter 1 project to be conducted, including a budget of proposed expenditures for services to public and private school children for the initial project year.

(4) A description of—

(i) The desired outcomes for children participating in the Chapter 1 project, in terms of basic and more advanced skills that all children are expected to master, that will be a basis for evaluating the project under § 200.35; and

(ii) How the LEA will measure substantial progress toward meeting the desired outcomes.

(5) A description of the services to be provided to—

(i) Eligible children enrolled in private elementary and secondary schools to ensure equitable participation of those children in accordance with §§ 200.50-200.55; and

(ii) Children in local institutions for neglected or delinquent children, including children in local correctional institutions.

(6) A description of any innovation projects the LEA proposes to conduct.

(7) Data showing that the LEA has maintained fiscal effort in accordance with § 200.41 if those data are not otherwise available to the SEA.

(8) If appropriate, the assurance concerning comparability of services in § 200.43(c)(1)(i).

(9) The assurances required under section 436(b) (2) and (3) of GEPA relating to fiscal control and fund accounting procedures.

(10)(i) Assurances that the LEA's Chapter 1 projects—

(A) Are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served;

(B) Are designed and implemented in consultation with teachers (including early childhood professionals, pupil services personnel, and librarians, if appropriate);

(C) Provide for parental involvement in accordance with § 200.34;

(D) Provide for the allocation of time and resources for frequent and regular coordination between Chapter 1 staff and the regular staff to ensure that both the Chapter 1 and regular instructional programs meet the special educational needs of children participating in programs under this part; and

(E) Provide maximum coordination between Chapter 1 services and services provided to address children's handicapping conditions or limited English proficiency; and

(ii) With the least possible paperwork and burden, additional information an SEA finds necessary to ensure compliance with these assurances.

(b) *Development and approval of application An application must be—*

(1) Developed in consultation with parents and teachers; and

(2) Approved by the SEA under § 200.21.

(c) *Frequency of submission.* (1) An LEA shall submit to the SEA an application prior to each project period.

(2) A project period may cover a period of not more than three years.

(d) *Annual updating of information in the application.* An LEA shall annually update its application by submitting to the SEA—

(1) Information on eligible school attendance areas and the selection of project areas required in paragraph (a)(2) of this section;

(2) Data showing that the LEA has maintained fiscal effort in accordance with § 200.41 if those data are not otherwise available to the SEA: and

(3) A budget of proposed expenditures for services to public and private school children under this part for the project year.

(e) *Further updating of information in the application.* If there are substantial changes in the number or needs of the children to be served or the services to be provided, an LEA shall submit a description of the changes to the SEA.

(Authority: 20 U.S.C. 2721(b), 2722 (b)-(c), 2723, 2728 (a), (c), 2838(c))

§ 200.21 Under what conditions does an SEA approve an LEA's application?

(a) *Standards for approval.* An SEA shall approve an LEA's application for a subgrant if—

(1) The application meets the requirements in § 200.20; and

(2) The SEA determines that the LEA—

(i) Maintained fiscal effort in accordance with § 200.41; or

(ii) Has modified its application to take into account its reduced allocation if the LEA failed to maintain effort.

(b) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA of its responsibility to comply with all applicable requirements.

(Authority: 20 U.S.C. 2722, 2728(a))

Allocation of Basic Grants

§ 200.22 How does an SEA allocate funds for basic grants to an LEA?

(a) If the Secretary determines the amount of funds that each LEA in a State is eligible to receive under section 1005(a)(2)(A) of the Act, an SEA shall

allocate that amount to each LEA within the State.

(b) If the Secretary determines county aggregate amounts under section 1005(a)(2)(B) of the Act, the SEA shall allocate those county aggregate amounts to LEAs in accordance with §§ 200.23–4–200.24.

(Authority: 20 U.S.C. 2711(a))

§ 200.23 How does an SEA allocate county aggregate amounts?

Except as provided in § 200.24, an SEA shall allocate county aggregate amounts to LEAs as follows:

(a) *Allocations based on children in local institutions for neglected or delinquent children.* (1)(i) Except as provided in paragraphs (a)(2), (3), and (4) of this section the SEA shall first allocate to a particular LEA that portion, if any, of the county aggregate amount that is based on the total number of children aged 5 to 17, inclusive, in the LEA's school district who resided in a local institution for neglected or delinquent children—and were not counted under Subpart 3 of Part D of Chapter 1 (programs for neglected or delinquent children operated by State agencies)—for at least 30 consecutive days, at least one day of which was in the month of October of the preceding fiscal year.

(ii) For the purpose of this section, the SEA shall consider children who are in local correctional institutions to be residing in institutions for delinquent children.

(2) If the SEA determines that the LEA is unable or unwilling to provide for the special educational needs of the children referred to in paragraph (a)(1) of this section, the SEA shall—

(i) Reduce the LEA's allocation by the amount that is based on those children, including any concentration grant funds generated by those children; and

(ii) Assign that portion of the LEA's allocation to—

(A) The SEA if the SEA assumes educational responsibility for those children; or

(B) Another State agency or LEA that agrees to assume educational responsibility for those children.

(3) If no public agency is willing to assume educational responsibility for the children referred to in paragraph (a)(1) of this section, the SEA may not reallocate to any other LEA that portion of the LEA's allocation that is based on those children.

(4) If a local institution for neglected or delinquent children closes and the children are transferred to an institution in the school district of another LEA, the SEA shall adjust the allocations of the two LEAs to reflect the transfer.

(b) *Allocations based on the distribution of children from low-income families*—(1) *General rule.* (i) After following the procedures in paragraph (a) of this section, the SEA shall allocate the remaining county aggregate amount of LEAs in the county on the basis of the best available data on the number of children from low-income families in the school districts of those LEAs.

(ii) The SEA shall determine the number of children from low-income families in the school districts of the LEAs in the county by using the same measure of low-income throughout the State.

(iii) In accordance with section 1403(a) of the Act, an LEA's allocation under paragraphs (a) and (b)(1)(i) of this section may not be less than 85 percent of the allocation it received for the previous fiscal year.

(2) *Special circumstances.* The SEA shall adjust the allocations it makes under paragraph (b)(1) of this section to reflect the following special circumstances:

(i) *LEAs in more than one county.* If a school district of an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to the LEA from the county aggregate amount for each county in which the school district of the LEA is located provided the aggregate number of children from low-income families in the LEA is 10 or more.

(ii) *LEAs serving children from another LEA.* If an LEA serves a substantial number of children within the same geographic area as another LEA, the SEA may adjust the allocations between the LEAs in a manner the SEA determines will best carry out the purposes of Chapter 1.

(iii) *Changes in LEAs.* If an LEA's school district is merged or consolidated, or a portion of the district is transferred to another LEA, the SEA may—

(A) Adjust the allocations for the affected LEAs to reflect the number of children from low-income families for whom each LEA is providing a free public education; or

(B) Permit an LEA that has submitted an approved application to carry out the project, by itself or in cooperation with another LEA, during the remainder of the fiscal year.

(3) *Minimum allocation.* The SEA is not required to allocate to an LEA a basic grant of funds under this part generated by fewer than 10 children.

(Authority: 20 U.S.C. 2711, 2822–2823)

§ 200.24 Are there exceptions to how an SEA allocates county aggregate amounts?

(a) In any State in which a large number of LEAs overlap county boundaries, the SEA may apply to the Secretary for authority to make allocations directly to LEAs without regard to counties.

(b) If an SEA allocates directly to LEAs under paragraph (a) of this section, the SEA shall use the same factors contained in section 1005(c) of the Act to determine the LEAs' allocations as the Secretary used to compute county aggregate amounts under section 1005(a)(2)(B) of the Act.

(c) An LEA dissatisfied with the determination by the SEA under this section may appeal directly to the Secretary for a final determination.

(Authority: 20 U.S.C. 2711)

Allocation of Concentration Grants

§ 200.25 How does an SEA allocate concentration grants to an LEA?

(a) *General rule.* (1) Except as provided in paragraph (b) of this section, an SEA shall allocate a county's concentration grant funds only to LEAs—

(i) Whose school districts lie, in whole or in part, within the country; and

(ii) That meet the eligibility criteria in § 200.3(c)(1).

(2) In allocating concentration grant funds under paragraph (a) of this section, the SEA shall distribute the funds to each LEA that is eligible to receive those funds in proportion to the current number of children counted for purposes of § 200.23 or § 200.24 in the school district of each LEA compared to the current number of those children in the school districts of all LEAs that are eligible for concentration grants in the county.

(b) *Exceptions.* (1)(i) An SEA may reserve not more than 2 percent of the amount of concentration grant funds it receives to make direct payments to LEAs that meet the criteria in § 200.3(c)(1) (i) and (iii) but are located in counties that are not eligible under § 200.3(c)(1)(ii).

(ii) If an SEA plans to reserve concentration grant funds under paragraph (b)(1)(i) of this section, the SEA, before allocating any concentration grant funds under paragraph (a) or (b) (2)–(3) of this section, shall—

(A) Determine which LEAs located in ineligible counties are eligible to receive concentration grant funds;

(B) Determine the appropriate amount to be reserved;

(C) Proportionately reduce the amount available for concentration grants for eligible counties or LEAs to provide the reserved amount;

(D) Rank order the LEAs eligible for concentration grant funds that are located in ineligible counties according to the number or percentage of children counted for purposes of § 200.23 or § 200.24 in the preceding fiscal year in each LEA;

(E) Select, in rank order, those LEAs that the SEA plans to provide concentration grant funds; and

(F) Distribute the reserved funds among the selected LEAs in proportion to the current number of children counted for purposes of § 200.23 or § 200.24 in the school district of each LEA compared to the current number of those children in all the school districts of the selected LEAs.

(2) In a county in which no LEA meets the eligibility criteria in § 200.3(c)(1)(iii), an SEA shall—

(i) Identify those LEAs in which either the number or percentage of children counted for purposes of § 200.23 or § 200.24 in the preceding fiscal year exceeds the average number or percentage of those children in the county; and

(ii) Allocate concentration grant funds for the county among the LEAs identified in paragraph (b)(2)(i) of this section in proportion to the current number of children counted for proposes of § 200.23 or § 200.24 in the school district of each LEA compared to the current number of those children in all the school districts of those LEAs.

(3) In a State that receives a minimum concentration grant under section 1006(a)(1)(B) of the Act, the SEA shall—

(i) Allocate concentration grant funds among LEAs in the State in accordance with the provisions in paragraphs (a) and (b) of this section; or

(ii) Without regard to the counties in which the LEAs are located—

(A) Identify those LEAs in which either the number or percentage of children counted for purposes of § 200.23 or § 200.24 in the preceding fiscal year exceeds the average number or percentage of those children in the State; and

(B) Allocate concentration grant funds among the LEAs identified in paragraph (b)(3)(ii)(A) of this section in proportion to the current number of children counted for purposes of § 200.23 or § 200.24 in the school district of each LEA compared to the current number of those children in all the school districts of all LEAs so identified.

(c) *Use of concentration grant funds.* (1) An LEA that receives concentration grant funds under this section shall use those funds to carry out activities described in its approved project aplication under § 200.20.

(2) The LEA is not required to account for concentration grant funds separately from basic grant funds.

(Authority: 20 U.S.C. 2712)

Reallocation

§ 200.26 How does an SEA reallocate funds?

(a) An SEA shall reallocate, on a timely basis, excess Chapter 1 funds provided under §§ 200.22–200.25—

(1) From an LEA that—

(i) Is not participating in the Chapter 1 LEA Program;

(ii) Has had its allocation reduced because it failed to meet the maintenance of effort requirements in § 200.41;

(iii) Has carryover funds that exceed the percentage limitation in § 200.46; or

(iv) Has excess funds for other reasons; or

(2) That the SEA has recovered after determining that an LEA has failed to spend funds received under this part in accordance with applicable law.

(b)(1) An SEA may reallocate excess Chapter 1 funds referred to in paragraph (a) of this section only to LEAs with the greatest need for those funds because of inequities in, or mitigating hardships caused by, application of the allocation formula in section 1005 of the Act.

(2) Factors that may cause inequities in the formula include—

(i) An increase since the most recent decennial census, caused by population shifts or changing economic conditions, in the number of children from low-income families.

(ii) Caseload data used in the allocation formula that are not representative of the number of neglected or delinquent children in local institutions; and

(iii) Other circumstances in which the statutory formula fails to reflect accurately the number or percentage of low-income children.

(c) The SEA shall develop procedures for reallocating excess Chapter 1 funds provided under §§ 200.22–200.25 that include the following three steps:

(1) A determination of which LEAs are eligible to receive additional funds as indicated by the presence of factors such as those in paragraph (b)(2) of this section. An LEA's eligibility must be based on inequity caused by the allocation formula.

(2) From among the eligible LEAs, a determination of which LEAs have the greatest need for funds. The SEA may consider such factors as—

(i) The degree of increase in the number or percentage of children from low-income families; and

(ii) An LEA's need for additional funds to provide Chapter 1 services to address the unmet needs of eligible Chapter 1 children.

(3) An establishment of timelines for reallocation.

(d)(1) An SEA may reallocate excess funds only during the Federal fiscal year for which the funds were appropriated or during the succeeding Federal fiscal year.

(2) Reallocation does not extend the period during which the excess funds are available for obligation.

(Authority: 20 U.S.C. 1225(b), 2823(b), 2832(b))

§§ 200.27–200.29 [Reserved]

Subpart D—What Project Requirements Apply to the Chapter 1 LEA Program?

§ 200.30 How does an LEA select school attendance areas to be project areas?

(a) *General rule.* (1) Except as provided in paragraphs (b) and (d) of this section, an LEA that receives Chapter 1 funds under this part shall conduct Chapter 1 projects in school attendance areas that have high concentrations of children from low-income families.

(2)(i) An LEA shall identify a school attendance area with a high concentration of children from low-income families as an eligible school attendance area if—

(A) The percentage of children from low-income families in that school attendance area is at least as high as the percentage of children from low-income families in the LEA as a whole; or

(B) The number of children from low-income families in that school attendance area is at least equal to the average number of children from low-income families per school attendance area in the LEA as a whole.

(ii) In identifying eligible areas, the LEA may use a combination of the methods in paragraph (a)(2)(i) of this section, except that the total number of eligible school attendance areas may not exceed the number the LEA would have identified as eligible if it had used only one of the methods.

(iii) If an LEA ranks its school attendance areas by grade span groupings under paragraph (a)(3)(i)(A) of this section, the LEA shall determine the percentage or average number of children from low-income families in the LEA as a whole for each grade span grouping.

(3) If fund available under this part are insufficient to provide programs and projects for all educationally deprived

children in eligible school attendance areas, an LEA shall—

(i) Annually rank its eligible school attendance areas from highest to lowest according to relative degree of concentration of children from low-income families. The LEA may rank its school attendance areas—

(A) By grade span groupings; or

(B) For the entire LEA; and

(ii) Based on the needs of educationally deprived children identified under § 200.31(b) and the resources necessary to meet those needs, determine in rank order the number of eligible school attendance areas to be served.

(4) An LEA may carry out a Chapter 1 program or project in an eligible school attendance area only if it carries out a Chapter 1 program or project in all other eligible school attendance areas that are ranked higher under paragraph (a)(3) of this section.

(b) *Special rules.* Notwithstanding paragraph (a) of this section, an LEA may identify and rank eligible school attendance areas as follows:

(1) An LEA may designate as eligible and serve all school attendance areas within a grade span grouping or in the entire LEA if the percentage of children from low-income families in each school attendance area is not more than five percentage points above or five percentage points below the average percentage of children from low-income families within a grade span grouping or within the entire LEA.

(2)(i) If the expenditure requirements in paragraph (b)(2)(ii) of this section are met, an LEA may designate as eligible any school attendance areas in which at least 25 percent of the children are from low-income families.

(ii)(A) Except as provided in paragraph (b)(2)(ii)(B) of this section, an LEA may use the provision in paragraph (b)(2)(i) of this section only if, in each school attendance area of the LEA in which Chapter 1 projects were carried out during the preceding year, the aggregate per pupil expenditures of funds available under this part are funds from a State program that meets the requirements of section 1018(d)(1)(B) of the Act in the current fiscal year equal or exceed the aggregate per pupil expenditures from those sources in the preceding fiscal year, provided that each school attendance area qualifies for the amount under the requirements in § 200.33.

(B) An LEA may expend in the current fiscal year in particular school attendance areas less than the aggregate per pupil amount required under paragraph (b)(2)(ii)(A) of this section if the LEA determines under § 200.33 that fewer resources are needed to meet the needs of children selected for participation in those attendance areas.

(3)(i) An LEA may designate a school that serves an ineligible school attendance area or serves more than one school attendance area as an eligible school if the proportion of children from low-income families in average daily attendance in that school is substantially equal to the proportion of children from low-income families in an eligible school attendance area.

(ii) If an LEA designates a school as eligible under paragraph (b)(3)(i) of this section, the LEA shall—

(A) Determine that the school complies with the school attendance area requirements in paragraph (a) of this section; and

(B) At its discretion, apply the special rules for identifying and ranking eligible school attendance areas in paragraph (b) of this section to the school.

(4) With the approval of the SEA, an LEA may designate as eligible and serve a school attendance area with a substantially higher number or percentage of educationally deprived children before school attendance areas with higher concentrations of children from low-income families if—

(i) The LEA does not serve more school attendance areas than could otherwise be served; and

(ii) The SEA determines that the selection of school attendance areas under paragraph (b)(4) of this section will not substantially impair the delivery of services to educationally deprived children from low-income families in project areas served by the LEA.

(5)(i) An LEA may continue to provide for one year Chapter 1 services in a school attendance area that is not eligible or is eligible but not selected under paragraph (a) of this section if that school attendance area was eligible and selected under the standards in paragraph (a) of this section in the immediately preceding year.

(ii) A school attendance area that continues to be served under paragraph (b)(5)(i) of this section may take the place of the lowest ranked but otherwise eligible school attendance area.

(6) With the approval of the SEA, an LEA may skip eligible school attendance areas that have higher proportions or numbers of children from low-income families if the children in those attendance areas are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under Chapter 1, except that the LEA shall—

(i) Determine the number of children in private elementary and secondary schools to receive Chapter 1 services without regard to non-Federal compensatory education funds used to serve eligible children in public elementary and secondary schools; and

(ii) Identify children in private schools to receive Chapter 1 services in accordance with the requirements in paragraphs (a) and (b) (1)–(5) of this section.

(c) For purposes of paragraphs (a) and (b) of this section, an LEA, on the basis of the best available data on children from low-income families, shall annually select and use the same measure of low income—which may be a composite of several indicators—to identify and rank eligible school attendance areas within a grade span grouping or for the entire LEA.

(d) *Exemptions.* An LEA does not have to comply with the requirements in this section but shall comply with the requirements in § 200.31 if the LEA has—

(1) A total enrollment of fewer than 1,000 children; or

(2) No more than one school attendance area at each grade span.

(Authority: 20 U.S.C. 2723 (a)–(b))

§ 200.31 How does an LEA identify and select children to participate?

(a) *General rule.* Except as provided in paragraph (c) of this section and § 200.36, an LEA shall use funds available under this part only for educationally deprived children, identified under paragraph (b) of this section as having the greatest need for special assistance, in school attendance areas or schools selected under § 200.30.

(b) *Annual assessment of educational needs.* An LEA that receives funds under this part shall annually assess educational needs under this part as follows:

(1) Identify educationally deprived children, as defined in § 200.6(c), in all eligible school attendance areas, including educationally deprived children in private schools.

(2) On the basis of information obtained under paragraph (b)(1) of this section, including information concerning educationally deprived children in private schools, identify the general instructional areas and grade levels on which the program will focus. Instructional areas and grade levels may vary among and within school attendance areas if the needs assessment data support those variations.

(3) Establish educationally related objective criteria, which include written or oral testing instruments, for each grade level and instructional area to select educationally deprived children

for participation in the Chapter 1 project.

(4) Uniformly apply the criteria required in paragraph (b)(3) of this section to particular grade levels throughout the LEA.

(5) Select for services those educationally deprived children who have the greatest need for special assistance.

(6) Determine—

(i) The special educational needs of participating children with sufficient specificity to ensure concentration on those needs; and

(ii) The resources such as personnel, instructional materials, and library resources necessary to meet those special educational needs.

(c) *Special rules.* In selecting children to participate in Chapter 1, an LEA may implement the following provisions:

(1) An LEA may use funds available under this part during the current school year to continue to serve educationally deprived children who begin participation in a Chapter 1 project but who, in the same school year, are transferred to a school attendance area or a school not receiving funds under this part.

(2) An LEA may skip educationally deprived children in greatest need of special assistance if those children are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under Chapter 1.

(3) An LEA may use funds available under this part to serve, for a maximum of two additional years, children who were identified in the previous year as being in greatest need for special assistance and who continue to be educationally deprived but are no longer in greatest need of special assistance.

(4) An LEA shall consider as eligible and may serve children who, at any time in the previous two years, received services under the Chapter 1 Program for Neglected or Delinquent Children.

(5)(i) An LEA may identify as eligible and serve under this part children receiving services to overcome handicapping conditions or limited English proficiency if these children—

(A) Have needs stemming from educational deprivation and not needs related solely to their handicapping conditions or limited English proficiency; and

(B) Are selected on the same basis as other children identified as eligible for and selected to receive services under paragraph (b) of this section.

(ii) In identifying and selecting limited English proficient children for participation in the Chapter 1 LEA Program, an LEA shall—

(A) For children with sufficient English language proficiency, use tests written in the English language, with or without bilingual assistance; or

(B) For children whose lack of English language proficiency precludes valid assessment in the English language, use factors such as teacher evaluation of student performance, language dominance tests in combination with other measures, or other indicators that may be used separately, as a composite score, or as a composite with weighting, to select children on a basis other than English language deficiency.

(iii) An LEA may not use funds available under this part to provide services that are required by Federal, State, or local law to overcome children's handicapping conditions or limited English proficiency.

(Authority: 20 U.S.C. 2724)

§ 200.32 What are the size, scope, and quality requirements of a project?

An LEA shall use funds available under this part for a project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served.

(Authority: 20 U.S.C. 2722(c)(1))

§ 200.33 How does an LEA allocate resources to project areas and schools?

(a) Except as provided in paragraph (b) of this section, an LEA shall allocate resources available under this part among project areas and schools on the basis of—

(1) The number and needs of children selected for participation under § 200.31;

(2) The degree of educational deprivation of these children; and

(3) The services to be provided.

(b) For the sole purpose of allocating resources available under this part among project areas and schools under paragraph (a) of this section, an LEA may continue to count, for two additional years, children in those areas and schools who—

(1) Received Chapter 1 services in the preceding school year; but

(2) Are no longer eligible for services because of improved academic achievement attributable to the Chapter 1 services.

(Authority: 20 U.S.C. 2723(c))

§ 200.34 How does an LEA involve parents?

(a) *General rule.* (1) An LEA may receive funds under this part only if it implements programs, activities, and procedures for the involvement of parents of participating public and private school children. This involvement must include, but is not limited to, parent input into the planning, design, and implementation of the Chapter 1 LEA Program.

(2)(i) The activities and procedures required under paragraph (a)(1) of this section must be planned and implemented with the meaningful consultation of parents of participating children.

(ii) The consultation required in paragraph (a)(2)(i) of this section and in other sections in this part must be organized, systematic, ongoing, informed, and timely in relation to decisions about the program.

(3) The activities and procedures for the involvement of parents must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward achieving the goals under paragraph (b) of this section.

(b) *Goals of parental involvement.* To meet the requirements in paragraph (a) of this section, an LEA shall, in coordination with parents of participating children, develop programs, activities, and procedures that have the following goals:

(1) To inform parents of participating children of the—

(i) Reasons their children are participating in the program; and

(ii) Specific instructional objectives and methods of the program.

(2) To support the efforts of parents, including training parents, to the maximum extent practicable, to—

(i) Work with their children in the home to attain the instructional objectives of the program; and

(ii) Understand the program requirements.

(3) To train parents, teachers, and principals to build a partnership between home and school.

(4) To train teachers, principals, and other staff members involved in the Chapter 1 LEA Program to work effectively with the parents of participating children.

(5) To consult with parents, on an ongoing basis, concerning the manner in which the school and parents can work better together to achieve the program's objectives.

(6) To provide a comprehensive range of opportunities for parents to become informed, in a timely way, about how the program will be designed, operated, and evaluated, allowing opportunities for parental participation, so that parents and educators can work together to achieve the program's objectives.

(7) To ensure opportunities, to the extent practicable, for the full participation of parents who lack

literacy skills or whose native language is not English.

(c) *Specific requirements.* An LEA shall implement the following activities:

(1)(i) Develop written policies, after consultation with and review by parents, to ensure that parents are involved in the planning, design, and implementation of the Chapter 1 LEA Program. The written policies must provide for timely response to recommendations by parents.

(ii) Make the policies available to parents of participating children.

(2) Convene an annual meeting, to which all parents of participating children must be invited, to explain the programs and activities provided with funds available under this part. The annual meeting may be districtwide or at the building level so long as all parents of participating children are provided the opportunity to attend.

(3)(i) Provide parents of participating children with reports on their children's progress.

(ii) To the extent practical, conduct a parent-teacher conference with the parents of each participating child to discuss the child's progress, placement, and methods the parents can use to complement the child's instruction.

(iii) Make education personnel under the Chapter 1 LEA Program, including pupil services personnel, readily accessible to parents.

(iv) Permit parents of participating children to observe Chapter 1 LEA Program activities.

(4) Provide opportunities for regular meetings of parents to formulate parental input into the program, if parents of participating children so desire.

(5) Provide parents of participating children with timely information about the program.

(6) Make parents aware of parental involvement requirements and other relevant provisions of the program.

(7) Provide reasonable support for parental involvement activities as parents may request.

(8) Coordinate, to the extent possible, parental involvement activities with programs funded under the Adult Education Act.

(9) To the extent practicable, provide information, programs, and activities for parents under this section in a language and form that the parents understand.

(d) *Assessment of the parental involvement program.* An LEA shall annually assess, through consultation with parents, the effectiveness of the parental involvement program and determine what action needs to be taken, if any, to increase parental participation.

(e) *Allowable activities and costs.* Chapter 1 activities that an LEA may support with funds available under this part to meet the requirements of this section include the following:

(1) Regular parent conferences.

(2) Parent resource centers.

(3) Parent training programs, including reasonable and necessary expenditures associated with parents' attendance at training sessions.

(4) Hiring, training, and utilization of parent involvement liaison workers.

(5) Reporting to parents on children's progress.

(6) Training and support of personnel, including pupil services personnel, to work with parents, coordinate parent activities, and make home contacts.

(7) Use of parents as classroom volunteers, tutors, and aides.

(8) Provision of school-to-home complementary curriculum and materials.

(9) Provision of assistance in implementing home-based education activities that reinforce classroom instruction and student motivation.

(10) Provision of timely information on the Chapter 1 LEA Program, including program plans and evaluations.

(11) Solicitation of parents' suggestions in the planning, development, and operation of the program.

(12) Provision of timely responses to parent recommendations.

(13) Parent advisory councils.

(14) Other activities designed to enlist the support and participation of parents in the instruction of their children.

(Authority: 20 U.S.C. 2726, 2731(a)(4))

§ 200.35 What are the requirements for evaluating and reporting project results?

(a) *LEA evaluations.* (1)(i) An LEA shall evaluate, at least once every three years, the effectiveness of its Chapter 1 projects, in terms of basic and more advanced skills that all children are expected to master, on the basis of—

(A) The desired outcomes described in the LEA's application; and

(B) Except for Chapter 1 children in preschool, kindergarten, and first grade, student achievement, aggregated for the LEA as a whole, in accordance with the national standards in Subpart H.

(ii) In accordance with § 200.1(b)(1) (statement of purpose) and § 200.20(a)(10)(i)(D) (coordination with the regular program), the LEA shall include in its evaluation a review of Chapter 1 participating children's progress in the regular program of the LEA. This review may be based on teacher judgments, grades, retention rates, and other appropriate indicators of success.

(2)(i) The LEA shall determine whether improved performance of Chapter 1 participating children is sustained over a period of more than 12 months.

(ii) To make this determination, an LEA shall assess performance of the same children for at least two consecutive 12-month periods, provided these children continue to be enrolled in schools of the LEA.

Example: An LEA provides Chapter 1 services during the 1989–90 school year. The LEA measures the gains made by participating children on a springtesting cycle (spring of 1989, 1990). To determine whether improved performance is sustained over a period of more than 12 months, the LEA measures performance again in the spring of 1991.

(3) The LEA shall report its evaluation results to the SEA at least once during each three-year application cycle.

(b) *SEA evaluations.* (1) An SEA shall evaluate, at least every two years, the Chapter 1 programs in the State on the basis of the local evaluations conducted under paragraph (a) of this section and sections 1107, 1202(a)(6), and 1242(d) of the Act.

(2) The SEA shall inform its LEAs, in advance, of the specific data that will be needed and how the data may be collected.

(3) The SEA shall—

(i) By a date established by the Secretary, submit its evaluation to the Secretary; and

(ii) Make public the results of the evaluation.

(c) *Annual performance report.* (1) An SEA shall annually—

(i) Collect data specified in section 1019 of the Act and by the Secretary in the SEA's annual performance report; and

(ii) Submit those data to the Secretary.

(2) An LEA shall provide to the SEA any data needed by the SEA to complete its annual performance report.

(Authority: 20 U.S.C. 1221e–1a, 2701(b), 2722 (b), (c)(3), 2729, 2835, 2852)

§ 200.36 What are the requirements for schoolwide projects?

(a) *Eligibility for a schoolwide project.* An LEA may conduct a Chapter 1 project to upgrade the entire educational program in a school if the following requirements are met:

(1) The school serves an eligible attendance area or is an eligible school in accordance with § 200.30.

(2) For the first year of the three-year project period the LEA determines, using the same measure of low income used to identify and rank school attendance areas under § 200.30(c), that at least 75

percent of the children residing in the school attendance area or enrolled in the school are from low-income families.

(3) The LEA develops a plan for the school that—

(i) Meets the requirements in paragraph (b) of this section; and

(ii) Has been approved by the SEA.

(4) The LEA meets the fiscal requirements in paragraph (c) of this section.

(b) *Required plan.* The plan required under paragraph (a)(3) of this section must—

(1) Provide for a comprehensive assessment of the educational needs of all students in the school, particularly the special needs of educationally deprived children;

(2) Establish goals to—

(i) Meet the special needs of all students; and

(ii) Ensure that educationally deprived children are—

(A) Served effectively; and

(B) Demonstrate performance gains that are comparable to the performance gains of other students;

(3) Describe the instructional program, pupil services, and procedures to be used to implement the goals of the schoolwide project;

(4) Describe the specific uses of funds available under this part in the schoolwide project;

(5) If appropriate, describe how the school will move to implement an effective schools program as defined in section 1471 of the Act;

(6) Be developed with the involvement of individuals who will be engaged in carrying out the plan, including—

(i) Parents;

(ii) Teachers;

(iii) Librarians;

(iv) Education aides;

(v) Pupil services personnel;

(vi) Administrators; and

(vii) If the plan relates to a secondary school, students;

(7) Provide for consultation among the individuals listed in paragraph (b)(6) of this section concerning the—

(i) Educational progress of all students in the school; and

(ii) Development and implementation of the accountability measures required in paragraph (f) of this section;

(8) Provide for appropriate training of parents of children to be served, teachers, librarians, and other instructional, administrative, and pupil services personnel to enable these individuals to carry out the plan; and

(9) Include procedures for measuring progress under paragraph (f) of this section and a description of the measures to be used.

(c) *Fiscal requirements.* An LEA that uses funds available under this part to conduct a schoolwide project shall meet the following fiscal requirements:

(1)(i) In an LEA with one or more schoolwide projects and one or more other schools serving project areas, the LEA shall provide for each schoolwide project an amount of funds made available under this part that, for each educationally deprived child, equals or exceeds the amount of funds made available under this part that the LEA provides for each educationally deprived child served in other project schools. In determining the number of educationally deprived children in a schoolwide project, the LEA shall use either of the following:

(A) The number of children in the schoolwide project below the highest ranked child served in other project schools in the LEA.

(B) All children meeting the definition of "educationally deprived children" in § 200.6(c).

(ii) The LEA shall allocate to a schoolwide project an amount of funds made available under this part that is sufficient to ensure that the project is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the educationally deprived children served.

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, during each fiscal year in which a schoolwide project is carried out, the LEA shall, in each schoolwide project, spend per child an amount of State and local funds—excluding amounts spent under a compensatory program as defined in § 200.45(a)(1) and special supplementary State and local funds required under Chapter 1 of the ECIA for each child in a schoolwide project who was not educationally deprived—that is at least equal to the amount of State and local funds the LEA spent per child in that school during the preceding fiscal year.

(ii) The LEA shall include for each fiscal year the cost of services for State and local programs under § 200.45(a)(2) only in proportion to the number of children served by these programs in the school in the year for which the determinations are made.

(3) The LEA shall ensure that funds made available under this part for a schoolwide project only supplement, and to the extent practical, increase the level of funds that would, in the absence of funds under this part, be made available from non-Federal sources for the school.

(4) The LEA shall comply with the comparability requirements in § 200.43.

(5) Notwithstanding paragraph (d)(2) of this section, the LEA shall keep records to document the expenditure of funds made available under this part in a schoolwide project.

(d) *Effect of selection for a schoolwide project.* (1) The SEA shall approve the plan of the LEA for a schoolwide project for a period of three years if the plan meets the requirements in paragraphs (b) and (c) of this section.

(2) For each school that has a schoolwide project plan approved by the SEA, the LEA is not required to—

(i) Comply with any Chapter 1 requirements prohibiting the commingling of funds available under this part with funds available for regular programs in order to show that Chapter 1 funds benefit only educationally deprived children;

(ii) Identify particular children as eligible to participate in the schoolwide project, but shall identify educationally deprived children for the purpose of paragraphs (b), (c), and (f) of this section; and

(iii) Demonstrate that the particular services paid for with Chapter 1 funds supplement the services regularly provided in that school.

(e) *Use of funds.* In addition to the activities included in § 200.4, the LEA may use funds made available under this part in schoolwide projects for—

(1) Planning and implementing effective schools programs; and

(2) Other activities to improve the instructional program and pupil services in the school such as—

(i) Reducing class size;

(ii) Training staff and parents; and

(iii) Implementing extended-day programs.

(f) *Accountability requirements.* (1) Except as provided in paragraph (f)(2) of this section, in order to continue a schoolwide project, an LEA must be able to demonstrate after three years for each school participating in a schoolwide project that—

(i) The achievement gains of educationally deprived children in the school exceed the average achievement gains of comparable participating Chapter 1 children in the LEA as a whole; or

(ii) The achievement gains of educationally deprived children in the school exceed the average achievement gains of comparable educationally deprived children in that school in the three fiscal years prior to the start of the schoolwide project.

(2) For a secondary school, if achievement levels over the three-year schoolwide project period as compared with the three-year period immediately

preceding the schoolwide project do not decline, demonstration of lower dropout rates, increased retention rates, or increased graduation rates are acceptable in lieu of increased achievement.

(3) If the SEA determines that a schoolwide project meets the requirements in paragraph (f) (1) or (2) of this section at the end of the three-year period provided in paragraph (d)(1) of this section, the SEA shall allow the LEA to continue the schoolwide project for an additional three years.

(4)(i) For the purpose of paragraph (f) (1) and (2) of this section, the LEA shall annually collect achievement and other assessment data for each school participating in a schoolwide project.

(ii) The LEA shall make the results of the annual collection of achievement and other assessment data available to parents, the public, and the SEA.

(5) The program improvement requirements in §§ 200.37–200.38 apply to schoolwide projects under this section.

(g) *Participation of children enrolled in private schools.* In determining which private school children residing in the school attendance area of a school participating in a schoolwide project are eligible for Chapter 1 services, the LEA shall apply which ever method it selected under paragraph (c)(1)(i) (A) or (B) of this section.

(Authority: 20 U.S.C. 2725, 2728(c), 2730–2731)

§ 200.37 What are an SEA's responsibilities for program improvement?

(a) *SEA program improvement plan.* (1) An SEA shall develop, in consultation with the committee of practitioners under § 200.70(e), a plan to ensure implementation of the provisions of paragraph (b) of this section and § 200.38.

(2) The SEA's plan must contain, but is not limited to, the following:

(i) The objective measures and standards the SEA and LEAs will use to assess aggregate performance and substantial progress toward meeting desired outcomes. The SEA may establish standards to be included in the plan to improve the educational opportunities of educationally deprived children by helping those children succeed in the regular program, attain grade-level proficiency, and improve achievement in basic and more advanced skills.

(ii) The means the SEA will use to develop a joint plan with an LEA that has identified, under § 200.38(b), a school in need of program improvement to attain satisfactory student progress.

(iii) In accordance with § 200.38(b)(6), the timetable for developing and implementing a joint plan with an LEA.

(iv) The program improvement assistance to be provided to a school identified under § 200.38(b)(6), which may include, but is not limited to—

(A) Training and retraining personnel;

(B) Developing curricula that have shown promise in similar schools;

(C) Replicating promising practices in effective schools models;

(D) Improving coordination between programs assisted under Chapter 1 and the regular school program; and

(E) Developing innovative strategies to enhance parental involvement.

(3) The SEA shall—

(i) Disseminate its plan to all LEAs and other State agencies that receive funds under Chapter 1; and

(ii) Make the plan available at the SEA for inspection by the Secretary.

(4) The SEA may amend its plan, if necessary, after consultation with the committee of practitioners.

(b) *SEA assistance to LEAs.* (1)(i) If funds are appropriated for the implementation of school improvement programs under section 1405 of the Act, an SEA shall fully implement the program improvement activities described in this section and § 200.38.

(ii) If funds are not appropriated under section 1405 of the Act, the SEA shall at a minimum—

(A) With the least possible paperwork and burden, follow the progress of any school identified by an LEA under § 200.38(b)(1);

(B) Develop implement with LEAs joint plans for program improvement under § 200.38(b)(6);

(C) Ensure that program improvement assistance is provided to each school identified under § 200.38(b)(6); and

(D) Conduct other program improvement activities to the extent practicable.

(2) An LEA may apply to the SEA for program improvement assistance funds appropriated under section 1405 of the Act.

(Authority: 20 U.S.C. 2730, 2731 (c)–(d), (g)–(i), 2825, 2851(b)).

§ 200.38 What are an LEA's responsibilities for program involvement?

(a) *Local review.* For each project school, an LEA shall—

(1)(i) Conduct an annual review of the effectiveness of its Chapter 1 project in improving student performance as measured by aggregate performance and the desired outcomes described in the LEA's application; and

(ii) Make the results of the review available to teachers, parents of participating children, and other appropriate parties, including principals of schools attended by Chapter 1 children;

(2) Determine whether improved performance is sustained over a period of more than 12 months as required by § 200.38(b)(6)(iv)(C); and

(3) Use the results of the review and the LEA's evaluation under section 1019 of the Act in program improvement efforts required by paragraph (b) of this section.

(b) *School program improvement.* (1) Except as provided in paragraph (b)(4) of this section, an LEA shall implement the requirements in paragraph (b)(2) of this section with respect to each school that—

(i) Does not show substantial progress toward meeting the desired outcomes described in the LEA's application; or

(ii)(A) Shows no improvement or a decline in aggregate performance of participating children for a 12-month period. No improvement or a decline in aggregate performance occurs if participating children, in the aggregate, in the school fail to make gains beyond that which they would be expected to make in the absence of the additional help the program provided.

(B)(*1*) Unless the conditions in paragraph (b)(1)(ii)(B)(*2*) of this section exist, the LEA is only required to determine the aggregate performance of a school in the instructional area that is the primary focus of the Chapter 1 LEA Program in that school.

(*2*) If the Chapter 1 LEA Program in that school addresses two or more instructional areas with relatively equal emphasis, the LEA shall determine aggregate performance in each area.

(2) For each school identified under paragraph (b)(1) of this section, the LEA shall develop and implement, in coordination with the school, a plan for program improvement that—

(i) Describes how the LEA will identify and modify Chapter 1 programs for each school and its participating children under this section;

(ii) Incorporates those program changes that have the greatest likelihood of improving the performance of educationally deprived children, including—

(A) A description of educational strategies designed to achieve the LEA's desired outcomes or otherwise to improve the performance and meet the needs of participating children;

(B) A description of the resources, and how those resources will be applied, to carry out the strategies selected, including, as appropriate—

(*1*) Qualified personnel;

(*2*) Inservice training;

(3) Curriculum materials;
(4) Equipment;
(5) Physical facilities;
(6) Technical assistance;
(7) Alternative curriculum that has shown promise in similar schools;
(8) Improving coordination between the Chapter 1 LEA Program and the regular school program;
(9) Evaluation of parental involvement;
(10) Appropriate inservice training for Chapter 1 staff and other staff who teach participating children; and
(11) Other measures selected by the LEA.

(3) The LEA shall—
(i) Submit the plan to the local school board and the SEA; and
(ii) Make the plan available to parents of participating children in the school.

(4) The LEA is not required to—
(i) Develop a school improvement plan for a school that served 10 or fewer children for the entire school year; or
(ii) Complete and implement a school improvement plan under development if data become available during plan development or prior to plan implementation that demonstrate that there has been a gain in aggregate performance and that substantial progress has been made toward meeting the desired outcomes.

(5)(i) The LEA shall develop a timeline for implementation of each school's plan, taking into consideration the degree of change needed, the nature of the changes, and other relevant factors.

(ii)(A) The plan must be fully implemented as soon as possible but no later than the beginning of the second school year after the school year during which the school did not show substantial progress toward meeting the LEA's desired outcomes or showed no improvement or a decline in aggregate performance of participating children.

(B) If full implementation of the plan requires the maximum time allowed under paragraph (b)(5)(ii)(A) of this section, the LEA shall implement portions of the plan as soon as possible

Example: An LEA determines that a school, during the 1988–89 school year, has shown a decline in aggregate performance. The LEA must develop and fully implement a school improvement plan in that school as soon as possible but not later than September 1990. For example, if the necessary changes can be accomplished quickly, such as purchasing readily available materials or equipment, the LEA would be able to implement its plan by September 1989. On the other hand, if the needed changes require a complete redesign of the LEA's project, the LEA might not be able to implement the plan fully before September 1990. In this case, the LEA must implement portions of the plan as soon as possible. For example, the LEA develops and implements a staff training program during the 1989–90 school year in preparation for full implementation of the plan in September 1990.

(6)(i) If, after the LEA's plan has been in effect for one full school year, the school is still identified as needing improvement under paragraph (b)(1) of this section, the LEA shall, with the SEA, develop and implement a joint plan for program improvement in the school.

(ii) The joint plan must—
(A) Be developed and implemented in consultation with school staff and parents of participating children; and
(B) Be approved by both the SEA and LEA before the plan may be implemented.

(iii)(A) The joint plan must be fully implemented as soon as possible but no later than the beginning of the second school year after the full school year during which the LEA's plan under paragraph (b)(2)–(5) of this section was in effect.

(B) If full implementation of the joint plan requires the maximum time allowed under paragraph (b)(6)(iii)(A) of this section, the SEA and LEA shall implement portions of the plan as soon as possible.

(iv) If the SEA finds that, after the joint plan has been in effect for one full school year, a school continues to need improvement under paragraph (b)(1) of this section, the SEA, with the LEA, shall—
(A) Review the plan;
(B) Make revisions that are designed to improve performance; and
(C) Continue to review and revise the joint plan each consecutive year until improved performance is sustained over a period of more than 12 months.

(v) Nothing in this section or § 200.37 shall be construed to give the SEA any authority concerning the educational program of an LEA that does not otherwise exist under State law.

Example: Both the LEA and SEA should follow the progress of the LEA's school improvement plan during the first full school year of implementation. In the example following paragraph (b)(5) of this section, if a plan is implemented by September 1989, school year 1989–90 would be the first full school year. If after one full year of implementation (school year 1989–90), the LEA determines that the school still has not improved, the LEA must develop and fully implement a joint program improvement plan with the SEA before the beginning of the second school year following the full school year the LEA's plan was in effect. Thus, in this example, the joint plan would have to be developed and fully implemented by the beginning of the 1991–92 school year. If the maximum time is needed, portions of the joint plan must be implemented as soon as possible. For example, if full implementation cannot be accomplished until the beginning of the 1991–92 school year, the LEA might be required to implement a staff training program during the 1990–91 school year in preparation for full implementation of the joint plan in school year 1991–92.

For an LEA that is unable to implement fully the school improvement plan until Septembr 1990, school year 1990–91 would be the first full school year. If after one full year of implementation (school year 1990–91), the LEA determines that the school still has not improved, the LEA must develop and fully implement a joint program improvement plan with the SEA before the beginning of the second school year following the full school year the LEA's plan was in effect. Thus in this example, the joint plan would have to be developed and fully implemented by the beginning of the 1992–93 school year. If the maximum time is needed, portions of the joint plan must be implemented as soon as possible. For example, if full implementation cannot be accomplished unitl the beginning of the 1992–93 school year, the LEA might be required to implement a staff training program during the 1991–92 school year in preparation for full implementation of the joint plan in school year 1992–93.

(c) *Local conditions.* (1) The LEA and the SEA, in performing their responsibilities under this section, shall take into consideration—

(i) The mobility of the student population;

(ii) The extent of educational deprivation among participating children that may negatively affect improvement efforts;

(iii) The difficulties involved in dealing with older children in Chapter 1 programs in secondary schools;

(iv) Whether indicators other than improved achievement demonstrate the positive effects on participating children of Chapter 1 activities; and

(v) Whether a change in the review cycle under section 1019 of the Act or paragraph (a)(1) of this section or in the measurement instrument used or other measure-related phenomena has rendered results invalid or unreliable for a particular year.

(2) The local conditions in paragraph (c)(1) of this section may be considered, as appropriate, at any point in the program improvement process, including the following:

(i) Determining the extent of services needed to meet desired outcomes in the LEA's application.

(ii) Allocating resources to schools.

(iii) Determining how substantial progress toward meeting desired outcomes will be measured.

(iv) Identifying a school in need of program improvement under paragraph (b)(1) of this section.

(v) Identifying a school that continues to need program improvement under paragraph (b)(6) of this section.

(d) *Student program improvement.* On the basis of the evaluation under section 1019 of the Act and local reviews under paragraph (a) of this section, an LEA shall—

(1) Identify all students who have been served for a school year and—

(i) Have not shown substantial progress toward meeting the desired outcomes established for participating children under § 200.20(a)(4); or

(ii) Whose performance show no improvement or a decline;

(2) Consider modifications in the LEA's Chapter 1 project to serve those students better;

(3) Conduct a thorough assessment of the educational needs of children who remain in the LEA's Chapter 1 project after two consecutive years of participation and—

(i) Have not shown substantial progress toward meeting the desired outcomes established for participating children under § 200.20(a)(4); or

(ii) Whose performance shows no improvement or a decline; and

(4) If appropriate, use the results of that needs assessment to modify the Chapter 1 project to meet the children's needs.

(e) *Private school children.* Program improvement and student improvement activities under this section must include participating children in private schools in accordance with section 1017 of the Act.

(f) *Effective date.* An LEA shall begin identifying schools and students in need of program improvement based on information gathered before or during the 1988–89 school year.

(g) *Technical assistance centers.* In carrying out the program improvement and student improvement activities under this section, an LEA and SEA shall utilize the resources of the regional technical assistance centers and appropriate regional rural assistance programs established under section 1456 of the Act to the full extent those resources are available.

(Authority: 20 U.S.C. 2731)

§ 200.39 How many personnel be assigned non-Chapter 1 duties?

(a) An LEA may assign public school personnel paid entirely with funds available under this part to limited supervisory duties that may provide some benefit to children not participating in the Chapter 1 project if—

(1) Similary situated personnel at the same school site, who are not paid with funds available under this part, are assigned these duties; and

(2) The time spent by Chapter 1 personnel on these duties does not exceed the least of the following:

(i) The proportion of total work time that similary situated non-Chapter 1 personnel at the same school site spend performing these duties.

(ii) One period per day.

(iii) Sixty minutes per day.

(b) The amount of time referred to in paragraph (a)(2) of this section may be calculated on a daily, weekly, monthly, or annual basis.

(c) The duties in paragraph (a) of this section need not be limited to classroom instruction and may include, but are not limited to, the following:

(1) Supervision of halls, playgrounds, lunchrooms, study halls, bus loading and unloading, and homerooms.

(2) Participation as a member of a school or district curriculum committee.

(3) Participation in the selection of regular curriculum materials and supplies.

(Authority: 20 U.S.C. 2853(a))

Subpart E—What Fiscal Requirements Apply to the Chapter 1 LEA Program?

§ 200.40 What is the prohibition against using funds under this part to provide general aid?

An LEA may use funds available under this part only for projects that are designed and implemented to meet the special educational needs of educationally deprived children who are—

(a) Identified and selected in accordance with § 200.31; and

(b) Included in the LEA's application that has been approved by the SEA.

(Authority: 20 U.S.C. 2721(a), 2722(b), 2724)

§ 200.41 What maintenance of effort requirements apply to this program?

(a) (1) *Basic standard.* Except as provided in § 200.42, and LEA may receive its full allocation of funds under this part if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public eduction in the LEA for the preceding fiscal year was not lesss than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, the "proceding fiscal year" is the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is Federal fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the 12-month period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending on June 30, 1987.

(3) *Expenditures*—(i) *To be considered.* In determining an LEA's compliance with the maintenance of effort requirement, the SEA shall consider the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(ii) *Not to be considered.* The SEA shall not consider the following expenditures in determining an LEA's compliance with the maintenance of effort requirement:

(A) Any expenditures for community services, capital outlay, or debt service.

(B) Any expenditures made from funds provided under Chapter 1 and Chapter 2 of Title I of the Act or Chapter 1 and Chapter 2 of the ECIA.

(b) *Failure to maintain effort.* (1) If an LEA fails to maintain effort and a waiver under § 200.42 is not granted, the SEA shall reduce the LEA's allocation of funds under this part in the exact proportion by which the LEA fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA) for the second preceding fiscal year.

(2) In detemining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, an LEA fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's expenditures for the second preceding fiscal year (1988) (the year that caused the LEA's failure to maintain

effort) to be no less than 90 percent of the LEA's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a)(1), (2))

§ 200.42 Under what circumstances may an SEA waive the maintenance of effort requirement?

(a) (1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement in § 200.41 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include but are not limited to the following:

(i) A natural disaster.

(ii) A preciptious and unforeseen decline in the financial resources of the LEA.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b) (1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall not reduce the amount of funds available under this part the LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, and LEA secures a waiver because its fiscal effort in the preceding year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's expenditures for the second preceding fiscal year (1988) (the year for which the LEA needed a waiver) to be no less than 90 percent of the LEA's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a)(3))

§ 200.43 What comparability of services requirements apply to this program?

(a) Except as provided in paragraph (b) of this section and § 200.45, an LEA may receive funds under this part only if, on a districtwide or grade span basis,—

(1) The LEA uses State and local funds to provide services in project areas that, taken as a whole, are at least comparable to services being provided in school attendance areas that are not receiving funds under this part; or

(2) In the event the LEA selects all its school attendance areas as project areas, the LEA uses State and local funds to provide services that, taken as a whole, are substantially comparable in each project area.

(b) An LEA with not more than one school attendance area for each grade span is not required to meet the comparability requirements in paragraph (a) of this section.

(c)(1) An LEA shall be considered to have met the comparability requirements in paragraph (a) of this section if it either—

(i) Files with the SEA a written assurance that it has established and implemented—

(A) A districtwide salary schedule;

(B) A policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(C) A policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies; or

(ii) Establishes and implements other measures for determining compliance such as the following:

(A) Compares the average number of students per instructional staff in each project school with the average number of students per instructional staff in schools not participating in programs under this part. A project school is comparable if its average does not exceed 110 percent of the average of schools not participating in programs under this part.

(B) Compares the average instructional staff salary expenditure per student in each project school with the average instructional staff salary expenditure per student in schools not participating in programs under this part. A project school is comparable if its average is at least 90 percent of the average of schools not participating in programs under this part.

(2) In determining compliance with paragraph (a) of this section, and LEA does not need to consider unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year.

(d)(1) An LEA shall develop written procedures to ensure compliance with paragraph (a) of this section.

(2) The written procedures must include a process for demonstrating that State and local funds are used to provide services in project areas that are at least comparable to the services provided with State and local funds in school attendance areas that are not receiving services with funds under this part.

(e) An LEA shall maintain annual records documenting compliance with paragraph (a) of this section.

(f)(1) The SEA shall monitor each LEA's compliance with the comparability requirements.

(2) If an LEA is found not to be in compliance with the comparability requirements, the amount to be withheld or repaid is the amount or percentage by which the LEA failed to comply with the measures established under paragraph (c) of this section.

(Authority: 20 U.S.C. 2728(c), (d))

§ 200.44 What supplement, not supplant requirement applies to this program?

(a) Except as provided in § 200.45(a)(1), and LEA may use funds available under this part only to supplement and, to the practicable, increase the level of non-Federal funds that would, in the absence of funds under this part, be made available for the education of pupils participating in Chapter 1 projects, and in no case may funds available under this part be used to supplant those non-Federal funds.

(b) To meet the requirement in paragraph (a) of this section, an LEA is not required to provide services under this part through use of a particular instructional method or in a particular instructional setting.

(Authority: 20 U.S.C. 2728(b), (d))

§ 200.45 How may an LEA exclude special State and local funds from comparability and supplement, not supplant determinations?

(a) *General rule.* (1) For the purpose of determining compliance with the comparability requirements in § 200.43 and the supplement, not supplant requirement in § 200.44, an LEA may exclude State and local funds spent in carrying out the following types of programs:

(i) Special State programs designed to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018 (d)(1)(B) of the Act.

(ii) Special local programs designed to meet in the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that the SEA has determined in advance under paragraph (c) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(2) For the puspose of determining compliance with the comparability requirements in § 200.43 only, an LEA may also exclude State and local funds

spent in carrying out the following types of programs:

(i) Bilingual education for children of limited English proficiency.

(ii) Special education for handicapped children.

(iii) State phase-in programs that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(2)(B) of the Act.

(b) *Secretarial determination regarding State programs.* (1) In order for an LEA to exclude State and local funds spent on State programs under paragraphs (a)(1)(i) and (2)(iii) of this section, an SEA shall request the Secretary to make an advance determination of whether—

(i) A special State program under paragraph (a)(1)(i) of this section meets the requirements in section 1018(d)(1)(B) of the Act; or

(ii) A state phase-in program under paragraph (a)(2)(iii) of this section meets the requirements in section 1018(d)(2)(B) of the Act.

(2) Before making a determination, the Secretary requires the SEA to submit copies of the State law and implementing rules, regulations, orders, guidelines, and interpretations that the Secretary may need to make the determination.

(3) The Secretary makes the determination in writing and includes the reasons for the determination.

(4) If there is any material change in the pertinent State law affecting the program, the SEA shall submit those changes to the Secretary.

(c) *SEA determination regarding local programs.* (1) In order for an LEA to exclude State and local funds spent on a special local program under paragraph (a)(1)(ii) of this section, the LEA shall request the SEA to make an advance determination of whether that program meets the requirements in section 1018(d)(1)(B) of the Act.

(2) Before making a determination, the SEA shall require the LEA to submit copies of the local law and implementing rules, regulations, guidelines, and interpretations that the SEA may need to make the determination.

(3) The SEA shall make the determination in writing and include the reasons for its determination.

(4) If there is any material change in the pertinent local requirements affecting the program, the LEA shall submit those changes to the SEA.

(Authority: 20 U.S.C. 2728 (b), (c), (d))

§ 200.46 What is the maximum amount of funds an LEA may carry over?

(a) *Limitation on carryover.* The amount of funds allocated to an LEA under §§ 200.22–200.25 that remains available for obligation for one additional year under section 412(b) of GEPA is limited to—

(1) No more than 25 percent of the funds allocated to the LEA from the Federal fiscal year 1989 appropriation (allocated to the LEA for the period July 1, 1989–September 30, 1990); and

(2) No more than 15 percent of the funds allocated to the LEA from the Federal fiscal year 1990 appropriation (allocated to the LEA for the period July 1, 1990–September 30, 1991) and each subsequent year's appropriation.

(b) *Exceptions.* (1) The percentage limitations in paragraph (a) of this section do not apply to an LEA that receives less than $50,000 under §§ 200.22–200.25 for any fiscal year.

(2) An SEA may grant an LEA a waiver of the percentage limitations in paragraph (a) of this section if—

(i) The SEA determines, on a one-time basis, that the LEA's request for the waiver is reasonable and necessary; or

(ii) A supplemental Chapter 1 appropriation becomes available for obligation in any fiscal year.

(Authority: 20 U.S.C. 2832(b), 1225(b))

§ 200.47 What is the prohibition against considering payments under this part in determining State aid?

A State may not take into consideration payments under this part in determining—

(a) The eligibility of an LEA for State aid; or

(b) The amount of State aid to be paid to an LEA for free public education.

(Authority: 20 U.S.C. 2854)

§§ 200.48–200.49 [Reserved]

Subpart F—What Requirements Govern Participation in the Chapter 1 LEA Program of Educationally Deprived Children in Private Schools?

General

§ 200.50 What are an LEA's responsibilities for providing Chapter 1 services to children in private schools?

(a) (1) An LEA shall provide to educationally deprived children, who reside in a project area of the LEA and who are enrolled in private elementary and secondary schools, special educational services and arrangements as will ensure those children's participation on an equitable basis in accordance with the requirements in §§ 200.50 through 200.55 and section 1017 of the Act.

(2) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and special educational needs of the educationally deprived children in private schools.

(3) The LEA shall exercise administrative direction and control over funds and property made available under this part that benefit educationally deprived children in private schools.

(4) (i) Services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, an association, agency, or corporation who or which, in the provision of those services, is independent of the private school and of any religious organization.

(ii) This employment or contract must be under the control and supervision of the public agency.

(b) (1) If an LEA allegedly fails to provide for the equitable participation of children in private schools, a parent, teacher, or other concerned individual or organization may file a complaint with the Secretary.

(2) For the purpose of this section, a complaint is a signed, written statement, including documentary evidence, alleging that an LEA has failed to meet its obligation under section 1017(a) of the Act to provide equitable services to children enrolled in private schools.

(3) The Secretary investigates a complaint and issues a letter of finding within 120 days after receipt of the complaint.

(Authority: 20 U.S.C. 2727 (a), (b))

§ 200.51 What are the requirements for consultation with private school officials?

(a) An LEA shall consult with appropriate private school officials—

(1) During all phases of the design and development of the LEA's Chapter 1 project, including consideration of—

(i) Which children will receive services;

(ii) How the children's needs will be identified;

(iii) What services will be offered;

(iv) How and where the services will be provided; and

(v) How the project will be evaluated; and

(2) Before the LEA makes any decision that affects the opportunities of eligible private school children to participate in the LEA's Chapter 1 project.

(b) The LEA shall give private school officials a genuine opportunity to express their views regarding each matter subject to the consultation

requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 2727(a))

§ 200.52 What factors does an LEA use in determining equitable participation?

(a) *Equal expenditures.* (1) Expenditures of funds made available under this part for educational services and arrangements for educationally deprived children in private schools must be equal (taking into account the number of children to be served and the special education needs of such children) to expenditures of funds made available under this part for children enrolled in the public schools of the LEA.

(2) Before determining equal expenditures under paragraph (a)(1) of this section, an LEA shall pay for reasonable and necessary administrative costs of providing services to public and private school children, including special capital expenses defined in § 200.57(a)(2), from the LEA's whole allocation of funds under this part.

(b) *Services on an equitable basis.* (1) The Chapter 1 services that an LEA provides for educationally deprived children in private schools must be equitable (in relation to the services provided to public school children) and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the private school children to be served.

(2) Services are equitable if the LEA—

(i) Assesses, addresses, and evaluates the specific needs and educational progress of eligible private school children on the same basis as public school children;

(ii) Provides, in the aggregate, approximately the same amount of instructional time and materials for each private school child as it provides for each public school child;

(iii) Expends equal amounts on services for public and private school children in accordance with paragraph (a) of this section; and

(iv) Provides private school children with an opportunity to participate that is equitable to the opportunity provided to public school children.

(Authority: 20 U.S.C. 2727(a))

§ 200.53 What are the requirements to ensure that funds do not benefit a private school?

(a) An LEA shall use funds under this part to provide services that supplement, and in no case supplant, the level of services that would, in the absence of Chapter 1 services, be available to participating children in private schools.

(b) An LEA shall use funds under this part to meet the special educational needs of participating children in a private school, but not for—

(1) The needs of the private school; or

(2) The general needs of children in the private school.

(Authority: 20 U.S.C. 2727(a), 2728(b))

§ 200.54 What are the requirements concerning equipment and supplies for the benefit of private school children?

(a) To meet the requirements of section 1017 of the Act, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with funds under this part for the benefit of educationally deprived children in private schools.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used only for Chapter 1 purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for Chapter 1 purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Chapter 1 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

(Authority: 20 U.S.C. 2727(a))

§ 200.55 May funds be used for construction of private school facilities?

No funds under this part may be used for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 2727(a))

Capital Expenses

§ 200.56 How does a State receive a payment for capital expenses?

(a) From the amount appropriated for capital expenses under section 1017(d) of the Act, the Secretary pays a State an amount that bears the same ratio to the amount appropriated as the number of private school children in the State who were served under Chapter 1 of the ECIA during the period July 1, 1984 through June 30, 1985 bears to the total number of private school children served during that period in all States.

(b) The Secretary reallocates funds not used by a State for purposes of § 200.57 among other States on the basis of need.

(Authority: 20 U.S.C. 2727(d))

§ 200.57 How does an LEA receive a payment for capital expenses?

(a) (1) An LEA may apply to the SEA for a payment to cover capital expenses that the LEA, in providing equitable Chapter 1 services to eligible children in private schools—

(i) Has paid from funds provided under Chapter 1 of the ECIA since July 1, 1985;

(ii) Is currently paying from funds provided under this part; or

(iii) Would incur because of an expected increase in the number or percentage of private school children to be served.

(2) "Capital expenses" means only expenditures for noninstructional goods and services that are incurred as a result of implementation of alternative delivery systems to comply with the requirements of *Aguilar* v. *Felton*. These expenditures—

(i) Include—

(A) The purchase, lease, and renovation of real and personal property (including but not limited to mobile educational units and leasing of rental sites or space);

(B) Insurance and maintenance costs;

(C) Transportation; and

(D) Other comparable goods and services; and

(ii) Do not include the purchase of instructional equipment such as computers.

(b) The LEA's application for payments under this section must contain—

(1) The amount, by fiscal year, of capital expenses paid from funds under this part and Chapter 1 of the ECIA since July 1, 1985;

(2) The nature of the capital expenses;

(3) An assurance that the LEA will use payments received under this section in accordance with § 200.58;

(4) An assurance that the LEA has consulted with appropriate private school officials in preparation of its application;

(5) If appropriate, information sufficient to support anticipated increases in the number or percentage of private school children to be served; and

(6) Any other information the SEA may need to make a determination of need under paragraph (c) of this section.

(c) An SEA shall distribute funds it receives under § 200.56 to LEAs that apply on the basis of need. In

determining need, the SEA shall establish criteria such as the following:

(1)(i) The extent to which payments under this section would be used by an LEA to increase the number of percentage of private school children served; or

(ii) The extent to which an LEA is providing Chapter 1 services to at lease the same number of percentage of private school children the LEA served during the period July 1, 1984 through June 30, 1985.

(2) The degree to which the quality of services an LEA is providing or would provide to private school children equals or exceeds the quality of services provided during the period July 1, 1984 through June 30, 1985.

(3) The percentage of funds the LEA has paid for capital expenses in relation to its basic Chapter 1 grant.

(Authority: 20 U.S.C. 2727(d))

§ 200.58 How does an LEA use payments for capital expenses?

(a) An LEA shall use payments received under § 200.57 for the following:

(1) To provide Chapter 1 services to benefit, to the extent possible, the public and private school children who were or are adversely affected by the LEA's expenditures for capital expenses.

(2) To cover capital expenses the LEA is incurring or will incur to maintain or increase the number of percentage of private school children being served.

(b) The LEA may not take the payments received under § 200.57 into account in meeting the requirements in § 200.52.

(c) The LEA shall account separately for payments receive under § 200.57.

(Authority: 20 U.S.C. 2727 (a), (d))

§ 200.59 [Reserved]

Bypass

§ 200.60 What general requirements govern the implementation of a bypass?

(a) The Secretary implements a bypass in accordance with the procedures in 34 CFR 76.670 through 76.677 if—

(1) An LEA is prohibited by law from providing Chapter 1 services for private school children on an equitable basis; or

(2) The Secretary determines, following a complaint or an investigation, that an LEA has substantially failed to provide for the participation on an equitable basis of private school children.

(b) If the Secretary implements a bypass, the Secretary—

(1) Waives the LEA's responsibility for providing Chapter 1 services for private school children and arranges to provide the required services;

(2) Consults with appropriate public and private school officials; and

(3) Deducts the costs of the services, including any administrative costs, from the appropriate allocations of funds provided under this part to the affected LEA and SEA.

(c) Pending the final resolution of an investigation or a complaint that could result in a bypass action, the Secretary may withhold from the allocation of the affected LEA or SEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in paragraph (b) of this section.

(Authority: 20 U.S.C. 2727(b))

§§ 200.61-200.69 [Reserved]

Subpart G—What Are Other State Responsibilities for the Chapter 1 LEA Program?

§ 200.70 Does a State have authority to issue State regulations for the Chapter 1 LEA Program?

(a)(1) Except as provided in paragraph (b) of this section, Chapter 1 does not preempt, prohibit, or encourage State rules, regulations, or policies issued pursuant to State law.

(2) If a State issues rules, regulations, or policies, they may not be inconsistent with the provisions of the following:

(i) The Chapter 1 statute.

(ii) The regulations in this part.

(iii) Other applicable Federal statutes and regulations.

(b) A State may not issue rules, regulations, or policies that limit LEAs' decisions affecting funds received under this part regarding—

(1) Grade levels to be served;

(2) Basic skill areas to be addressed;

(3) Instructional settings, materials, or teaching techniques to be used;

(4) Instructional staff to be employed, so long as the staff meets State certification and licensing requirements for education personnel; or

(5) Other essential support services.

(c) Nothing in paragraph (b) of this section limits an SEA's—

(1) Responsibility to work jointly with an LEA in suggesting various activities and approaches for program improvement under §§ 200.37–200.38;

(2) Authority to review and approve an LEA's application including determining that the activities in the application are supported by the LEA's needs assessment; or

(3) Responsibility to ensure that an LEA uses funds under this part in accordance with all applicable requirements.

(d) The State shall identify any State rule, regulation, or policy relating to the administration and operation of Chapter 1 programs funded under this part, including those based on State interpretation of any Federal law, regulation, or guideline, as a State-imposed requirement.

(e)(1)(i) Except as provided in paragraph (e)(1) (ii) and (iii) of this section, if a State issues major rules or regulations relating to the administration or operation of programs funded under this part, the State shall convene a State committee of practitioners to review before publishing any major proposed or final rule or regulation.

(ii) In an emergency situation is which a major rule or regulation must be issued within a very limited time to assist LEAs with the operation of programs under this part, the State—

(A) May issue the regulation without consulting the committee of practitioners; but

(B) Shall immediately thereafter convene the State committee of practitioners to review the emergency rule or regulation prior to issuance in final form.

(iii) The State shall ensure that the committee of practitioners reviews non-major rules or regulations before publication.

(2) If a State does not issue rules or regulations relating to the administration or operation of programs under this part but issues policies that the SEA and LEAs are required to follow, the State must comply with the requirements in this section for issuing rules and regulations.

(3)(i) The committee of practitioners must include—

(A) Administrators;

(B) Teachers;

(C) Parents;

(D) Members of local boards of education; and

(E) Representatives of private school children.

(ii) A majority of the committee must be representatives of LEAs.

(iii) Members of the committee must be knowledgeable about the Chapter 1 LEA Program.

(4) SEAs are encouraged to request from appropriate organizations recommendations for membership on the committee.

(Authority: 20 U.S.C. 2851)

§ 200.71 How may State personnel pay with funds available under this part be assigned to State programs?

(a) As provided in paragraph (b) of this section, an SEA may used funds received under § 200.72(a) to pay the salary costs for any employee assigned

to programs funded under this part and special State programs that meet the requirements of § 200.45(a)(1) (i) and (2).

(b) Except as provided in paragraph (c) of this section, salary costs are allowable charges to funds received under § 200.72(a) if the following conditions are met:

(1) An employee's assignments are related to the SEA's administrative, training, and technical assistance responsibilities under the programs.

(2) The SEA maintains contemporaneous time distribution records reflecting the actual amount of time the employee spends on the programs.

(3) The time distribution records are signed by the employee's supervisor.

(4) Actual costs are charged to the programs on the basis of the employee's time distribution records.

(c) If an employee is assigned administrative, training, and technical assistance duties that jointly benefit programs funded under this part and special State programs that meet the requirements of § 200.45 (a)(1)(i) and (a)(2), costs may be charged to the programs on a basis other than the time spent on each of the programs, provided charges are equitably distributed among funding sources.

Example. An employee spends three hours developing a manual for LEAs to use to improve parent participation in compensatory programs supported with funds under this part and under a State compensatory education program. Since only one manual is produced, the employee is unable to divide the actual time spent on each program. Therefore, the LEA may prorate costs, for example, to each program on the basis of the proportion of funds allocated for each of the programs benefiting from the manual.

(Authority: 20 U.S.C. 2853(b))

§ 200.72 What funds are available for an SEA to carry out its responsibilities?

(a) *Funds for State administration.* (1) Except for programs under Part C of Chapter 1 and as provided in paragraph (a)(2) of this section, an SEA shall use funds received under section 1404(a) of the Act for the proper and efficient performance of its duties under Chapter 1.

(2) The SEA may not use more than 15 percent of the funds referred to in paragraph (a)(1) of this section for indirect costs.

(b) *Funds for implementing school improvement programs.* (1) An SEA shall use funds made available under section 1405 of the Act for direct educational services in schools implementing program improvement plans under § 200.38(b)

(2) Parents of participating children, school staff, the LEA, and the SEA shall jointly agree to the selection of providers of technical assistance and the best use of funds available under paragraph (b)(1) of this section, which may include assistance from—

(i) An institution of higher education;

(ii) A federally supported educational laboratory or center;

(iii) State personnel with expertise in educational improvement;

(iv) Locally, State, or nationally based consultants; and

(v) Other providers of the specific services required by a school's program improvement plan.

(3) The SEA may not use the funds referred to in paragraph (b)(1) of this section for State administration.

(Authority: 20 U.S.C. 2824, 2825)

Complaint Procedures of the SEA

§ 200.73 What complaint procedures shall an SEA adopt?

An SEA shall adopt written procedure for:

(a) Receiving and resolving any complaint that the SEA or an LEA is violating a Federal statute or regulations that apply to the Chapter 1 LEA Program;

(b) Reviewing an appeal from a decision of an LEA with respect to a complaint; and

(c) Conducting an independent on-site investigation of a complaint if the SEA determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 2831(a))

§ 200.74 What are the minimum complaint procedures?

An SEA shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after the SEA receives a complaint:

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the SEA.

(Authority: 20 U.S.C. 2831(a))

§ 200.75 How does an organization or individual file a complaint?

An organization or individual may file a written signed complaint with an SEA. The complaint must include:

(a) A statement that the SEA or an LEA has violated a requirement of a Federal statute or regulations that apply to the Chapter 1 LEA Program; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

§§ 200.76–200.79 [Reserved]

Subpart H—What Are the National Evaluation Standards?

Evaluation by an LEA

§ 200.80 How does and LEA evaluate student achievement?

(a) An LEA shall evaluate student achievement under § 200.35(a)(1)(ii) as follows:

(1)(i) The LEA shall assess—

(A) The Chapter 1 participants' achievement in reading, mathematics, and language arts, not including projects designed to teach English to limited English speaking children, in grades 2 through 12, as appropriate, after receiving Chapter 1 services; compared to

(B) An estimate of what their achievement would have been in the absence of Chapter 1 services.

(ii) In assessing achievement in language arts, and LEA may use tests designed to measure language arts or reading. If a reading test is used, the LEA shall assess achievement in both basic and more advanced skills.

(2) With regard to more advanced skills, the LEA shall assess the progress of Chapter 1 participants as measured by—

(1) (A) The "comprehension" or equivalent score of a nationally normed reading test; and

(B) The "problems and applications" or equivalent score of a nationally normed mathematics test; or

(ii) A test without national norms if—

(A) It is the instrument used for other required achievement reporting under this part;

(B) It provides an appropriate "comprehension" and "problems and applications" score; and

(C) The LEA meets the conditions in § 200.82(b)(2).

(b)(1) The LEA shall measure student achievement under paragraph (a) of this section over a period of approximately 12 months.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the LEA shall report on either a spring-to-spring testing interval or a fall-to-fall testing interval.

(ii) An LEA that measured achievement on a fall-spring testing interval during the 1988–89 school year may continue to do so for one additional year only (the 1989–90 school year) if the SEA determines that implementation of the annual cycle in 1989–90 would impose a substantial hardship on the LEA.

Example: An LEA uses the results of a pre-test administered in September 1988 and a

post-test administered in May 1989 to measure and report on the achievement of children participating in projects under this part during the 1988–89 school year. The SEA determines that it would be a substantial hardship for the LEA to measure and report on children's achievement for the 1989–90 school year on either a spring-to-spring or fall-to-fall testing interval. Therefore, the LEA may continue to report on participating children's achievement on a fall-spring testing interval for the 1989–90 school year. However, the LEA must report on participating children's achievement in school year 1990–91 using either: pre-tests administered during the fall of 1990 and post-tests administered during the fall of 1991; or pre-tests administered during the spring of 1990 and post-tests administered during the spring of 1991.

(c)(1) At least once during the three-year evaluation period required under § 200.35(a), the LEA shall collect additional information to determine whether student achievement gains are sustained over a period of more than 12 months (see § 200.35(a)(2)).

(2) The LEA shall report this information on either a spring-spring-spring testing interval or a fall-fall-fall testing interval.

(d) In estimating expected performance under paragraph (a)(1)(ii) of this section and elsewhere in this subpart, the LEA shall use the performance of children in a norm sample developed locally, by the SEA, or by a test publisher.

(e) Any test instrument used by the LEA under this subpart must be the current edition or the immediately previous edition.

(Authority: 20 U.S.C. 2729(a), (c), 2835)

§ 200.81 What technical standards does an LEA apply in evaluating student achievement?

An LEA shall ensure that its procedures for evaluating the achievement of children in programs under this part are consistent with the following technical standards:

(a) Representativeness of evaluation findings.

(b) Reliability and validity of evaluation instruments and procedures.

(c) Valid assessment of achievement gains.

(d) Quality control mechanisms to minimize error in evaluation procedures.

(Authority: 20 U.S.C. 2729(a), 2835)

§ 200.82 What procedures does an LEA use in evaluating student achievement?

Unless it is using approved alternative procedures under § 200.83, an LEA shall use the following procedures to evaluate student achievement in each Chapter 1 project funded under this part that provides instructional services in reading, language arts, or mathematics in grades 2 through 12 during the regular school year:

(a) The LEA shall administer a pretest and a posttest separated by approximately 12 months.

(b) The LEA may use a test with or without national norms as follows:

(1) If the LEA uses a test with national norms, the LEA shall administer the test within the appropriate range of the test publisher's norming dates.

(2) If the LEA uses a test without national norms, the LEA shall adhere to technical requirements for equating this test with a nationally normed test as specified by the Title I Evaluation and Reporting System or other valid methods accepted by the Secretary.

(Authority: 20 U.S.C. 2729(a), 2835)

§ 200.83 What alternative procedures may an LEA use?

(a) An LEA may use alternative procedures to those in § 200.82 for evaluating student achievement if, before using the alternative procedures, the LEA obtains the approval of, first, the SEA and, then, the Secretary.

(b) In order for the SEA and the Secretary to approve alternative procedures, the LEA shall demonstrate that the procedures—

(1) Yield a valid and reliable measure of—

(i) The Chapter 1 children's performance in reading, language arts, or mathematics; and

(ii) The children's expected performance; and

(2) Produce results that can be expressed in the common reporting scale established by the Secretary for SEA reporting.

(Authority: 20 U.S.C. 2729(a), 2835)

§ 200.84 How does an LEA report the results of student achievement to the SEA?

(a)(1) In reporting the results of student achievement evaluated under §§ 200.80–200.83, an LEA shall use—

(i) The common reporting scale established by the Secretary for SEA reporting; or

(ii) Another form of local reporting approved by the SEA.

(2) If the SEA approves another form of reporting, the LEA shall include sufficient information to enable the SEA to convert the achievement results to the common reporting scale.

(b) Unless requested by the SEA, the LEA is not required to include in its evaluation report the results of the long-term evaluation required under § 200.80(c).

(Authority: 20 U.S.C. 2729(a) 2835)

Evaluation by An SEA

§ 200.85 What technical standards does an SEA use in conducting its evaluation?

In conducting its evaluation under § 200.35(b), an SEA shall use technical standards that are commensurate with and appropriately reinforce those required of LEAs in § 200.81.

(Authority: 20 U.S.C. 2729(b), 2835)

§ 200.86 What requirements govern an SEA sampling plan?

(a) If the SEA wishes to use sampling in its evaluation of programs conducted under this part, the SEA shall submit, for prior approval by the Secretary, a proposed sampling plan designed to ensure that evaluations will be conducted in a representative sample of its LEAs in any school year.

(b) The Secretary approves a sampling plan that will provide reliable and representative data under this subpart.

(c) (1) The SEA shall review its sampling plan at least once every three years.

(2) If, based on this review or other circumstances, the sampling plan requires changes, the SEA shall request reapproval of the plan by the Secretary.

(Authority: 20 U.S.C. 2835)

§ 200.87 How does an SEA aggregate LEA student achievement data for inclusion in its evaluation?

(a) An SEA shall include, for all LEAs, or a sample of LEAs if a sampling plan has been approved by the Secretary, the following information in its evaluation:

(1) A statewide average of student achievement gains resulting from participation in Chapter 1 projects under this part reported for—

(i) Each participating grade level from 2 through 12; and

(ii) Each of the following subjects: reading, mathematics, and language arts.

(2) A statewide average of progress students are making in more advanced skills, separately for reading and mathematics.

(3) Additional data specified by the Secretary.

(4) If applicable—

(i) The number of students excluded from the evaluation because of erroneous or missing data; and

(ii) The reasons for the exclusion.

(b) The SEA shall—

(1) Report student achievement gains on either a spring-to-spring or fall-to-fall basis; and

(2) Express each statewide average achievement gain in the common reporting scale established by the Secretary.

(Authority: 20 U.S.C. 2729(b), 2835)

Allowable and Nonallowable Costs

§ 200.88 For what evaluation activities may an LEA or SEA use funds available under this part?

(a) An LEA or SEA may use funds made available under this part for any of the following evaluation activities:

(1) Identifying specific strengths and weaknesses of a project.

(2) Determining the results of a project.

(3) Disseminating the results of Chapter 1 evaluations.

(b) In addition to the requirement concerning the supplementary nature of funds available under this part in § 200.44 and other rules governing the allowability of Chapter 1 expenditures, the provisions of paragraph (c) of this section apply to the use of funds available under this part to support the purchase, administration, scoring, and analysis of evaluation instruments.

(c) Except for cases in which data meeting these needs are already available, the LEA or SEA may use funds available under this part for any of the following:

(1) Testing Chapter 1 participants for evaluation purposes only.

(2) In order to permit the LEA or SEA to convert its evaluation results to the common scale, administering a nationally normed test to all, or a representative sample of, the Chapter 1 participants if the LEA or SEA has used a test without national norms for evaluation purposes.

(3) Testing an appropriate number of children no longer receiving Chapter 1 services to determine whether achievement gains are sustained over a period of more than 12 months (see § 200.35(a)(2)).

(Authority: 20 U.S.C. 2721(a), 2728(b), 2729(a), 2835)

§ 200.89 For what evaluation activities may an LEA or SEA not use funds available under this part?

An LEA or SEA may not use funds available under this part for any of the following evaluation activities:

(a) General districtwide or statewide testing programs.

(b) Establishing local or State norms.

(c) Development of tests to meet the standards in this subpart.

(Authority: 20 U.S.C. 2721(a), 2728(b))

PART 75—DIRECT GRANT PROGRAMS

2. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), unless otherwise noted.

3. A new § 75.910 is added to read as follows:

§ 75.910 Cooperation with audits.

A grantee shall cooperate with the Secretary and the Comptroller General of the United States or any of their authorized representatives in the conduct of audits authorized by Federal law. This cooperation includes access without unreasonable restrictions to records and personnel of the grantee for the purpose of obtaining relevant information.

(Authority: 5 U.S.C. Appendix 3, Sections 4(a)(1), 4(b)(1)(A), and 6(a)(1); 20 U.S.C. 1221e–3(a)(1), 1232f)

PART 76—STATE-ADMINISTERED PROGRAMS

4. The authority citation for Part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), and 3474, unless otherwise noted.

5. Section 76.401 is amended by revising (a)(1) to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) * * *

(1) Chapter 1 Program in Local Educational Agencies

* * * * *

6. A new subheading "Procedures for Bypass" and §§ 76.670 through 76.677 are added to Subpart F to read as follows:

Procedures for Bypass

Sec.
76.670 Applicability.
76.671 Notice by the Secretary.
76.672 Bypass procedures.
76.673 Appointment and functions of a hearing officer.
76.674 Hearing procedures.
76.675 Posthearing procedures.
76.676 Judicial review of a bypass action.
76.677 Continuation of a bypass.

Procedures for Bypass

§ 76.670 Applicability.

The regulations in §§ 76.671 through 76.677 apply to the following programs under which the Secretary is authorized to waive the requirements for providing services to private school children and to implement a bypass:

CFDA number and name of program	Authorizing statute	Implementing regulations Title 34 CFR Part
84.010 Chapter 1 Program in Local Educational Agencies	Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 *et seq.*).	200
84.151 Federal, State, and Local Partnership for Educational Improvement.	Chapter 2, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911–2952, 2971–2976).	298
84.164 Mathematics and Science Education	Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981–2993).	208
84.186 State and Local Programs	Part B, Drug Free Schools and Communities Act of 1986 (20 U.S.C. 3191–3197)	None

(Authority: 20 U.S.C. 2727(b), 2972(d)–(e), 2990(c), 3223(c))

§ 76.671 Notice by the Secretary.

(a) Before taking any final action to implement a bypass under a program listed in § 76.670, the Secretary provides the affected grantee and subgrantee, if appropriate, with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed bypass in sufficient detail to allow the grantee and subgrantee to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the grantee and subgrantee that they—

(i) Have at least 45 days after receiving the written notice to submit written objections to the proposed bypass; and

(ii) May request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the grantee and subgrantee by certified mail with return receipt requested.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

§ 76.672 Bypass procedures.

Sections 76.673 through 76.675 contain the procedures that the Secretary uses in conducting a show cause hearing. The hearing officer may modify the procedures for a particular case if all parties agree the modification is appropriate.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

§ 76.673 Appointment and functions of a hearing officer.

(a) If a grantee or subgrantee requests a hearing to show cause why the Secretary should not implement a bypass, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the grantee, subgrantee, and representatives of the private school children of the time and place of the hearing.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

§ 76.674 Hearing procedures.

(a) The following procedures apply to a show cause hearing regarding implementation of a bypass:

(1) The hearing officer arranges for a transcript to be taken.

(2) The grantee, subgrantee, and representatives of the private school children each may—

(i) Be represented by legal counsel; and

(ii) Submit oral or written evidence and arguments at the hearing.

(b) Within 10 days after the hearing, the hearing officer—

(1) Indicates that a decision will be issued on the basis of the existing record; or

(2) Requests further information from the grantee, subgrantee, representatives of the private school children, or Department officials.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

§ 76.675 Posthearing procedures.

(a) (1) Within 120 days after the record of a show cause hearing is closed, the hearing officer issues a written decision on whether a bypass should be implemented.

(2) The hearing officer sends copies of the decision to the grantee, subgrantee, representatives of the private school children, and the Secretary.

(b) Within 30 days after receiving the hearing officer's decision, the grantee, subgrantee, and representatives of the private school children may each submit to the Secretary written comments on the decision.

(c) The Secretary may adopt, reverse, modify, or remand the hearing officer's decision.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

§ 76.676 Judicial review of a bypass action.

If a grantee or subgrantee is dissatisfied with the Secretary's final action after a proceeding under §§ 76.672 through 76.675, it may, within 60 days after receiving notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located.

(Authority: 20 U.S.C. 2727(b)(4)(B)–(D), 2972(h)(2)–(4), 2990(c), 3223(c))

§ 76.677 Continuation of a bypass.

The Secretary continues a bypass until the Secretary determines that the grantee or subgrantee will meet the requirements for providing services to private school children.

(Authority: 20 U.S.C. 2727(b)(3)(D), 2972(f), 1221e–3(a)(1))

7. A new § 76.910 is added to read as follows:

§ 76.910 Cooperation with audits.

A grantee or subgrantee shall cooperate with the Secretary and the Comptroller General of the United States or any of their authorized representatives in the conduct of audits authorized by Federal law. This cooperation includes access without unreasonable restrictions to records and personnel of the grantee or subgrantee for the purpose of obtaining relevant information.

(Authority: 5 U.S.C. Appendix 3, Sections 4(a)(1), 4(b)(1)(A), and 6(a)(1); 20 U.S.C. 1221e–3(a)(1), 1232f)

§§ 76.2, 76.50, 76.51, 76.401, 76.500, 76.530, 76.532, 76.533, 76.534, 76.560, 76.561, 76.563, 76.600, 76.681, 76.683, 76.700, 76.701, 76.702, 76.703, 76.704, 76.707, 76.720, 76.722, 76.731, 76.760, 76.761, 76.770 and 76.902 [Amended]

8. The authority citations for the following sections are amended by adding "§ , 2831(a)" before the final parenthesis: §§ 76.2, 76.50, 76.51, 76.401, 76.500, 76.530, 76.532, 76.533, 76.534, 76.560, 76.561, 76.563, 76.600, 76.681, 76.683, 76.700, 76.701, 76.702, 76.703, 76.704, 76.707, 76.720, 76.722, 76.731, 76.760, 76.761, 76.770 and 76.902.

§ 76.1 [Amended]

9. The following authority citation is added at the end of § 76.1:

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), and 3474).

§ 76.125 [Amended]

10. The following authority citation is added at the end of § 76.125:

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), and 3474).

§ 76.591 [Amended]

11. The authority citation for § 76.591 is amended by adding ", 2831(a)" before "3474".

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

12. The authority citation for Part 77 (following § 77.1) is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), and 3474, unless otherwise noted)

PART 78—EDUCATION APPEAL BOARD

13. The authority citation for Part 78 is revised to read as follows:

(Authority: 20 U.S.C. 1234–1234c (1982), unless otherwise noted.

§ 78.2 [Amended]

14. Section 78.2 is amended by removing the paragraph designation for paragraph (a), removing paragraph (b), and redesignating paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(4)(i), (a)(4)(ii), (a)(4)(iii), and (a)(5) as paragraphs (a), (b), (c), (d), (d)(1), (d)(2), (d)(3), and (e), respectively.

§ 78.3 [Amended]

15. Section 78.3 is amended by removing "§§ 78.2(a)(4)" in paragraph (c) of the definition of "Appellant" and adding, in its place, "§ 78.2(d)", and by removing § 78.2(a)(4)" in paragraph (b)(2) of the definition of "Party" and adding, in its place, "§ 78.2(d)".

§ 78.6 [Amended]

16. Section 78.6 is amended by removing the paragraph designation for paragraph (a), removing paragraph (b), and redesignating paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) as paragraphs (a), (b), (c), (d), (e), (f), and (g), respectively.

§ 78.21 [Amended]

17. Section 78.21 is amended by removing "(a)(4) through (a)(6)" in paragraph (a)(2) and adding, in its place, "(d) through (f)".

§ 78.22 [Amended]

18. Section 78.22 is amended by removing "(a)(4) through (a)(6)" in paragraph (a) and adding, in its place, "(d) through (f)".

§ 78.42 [Amended]

19. Section 78.42 is amended by removing paragraph (c).

PART 204—[REMOVED]

20. Part 204 is removed.

Note: This Appendix will not be codified in the Code of Federal Regulations.

Appendix—Analysis of Comments and Changes

Section 200.1 What is the Chapter 1 Program in Local Educational Agencies?

Comment: One commenter expressed a concern that because the statute refers to helping Chapter 1 children succeed in the regular program of the LEA, § 200.1 of the regulations should include the language from section 1001(b) of the Act, which states that the program purpose shall be accomplished through supplemental programs.

Discussion: The Secretary agrees that, although one of the purposes for the program is to help children succeed in the regular school program, the Federal assistance must provide services that are supplemental to the regular instructional program of the LEA.

Changes: Section 200.1(b) has been modified to include the examples from section 1001 of the Act.

Comment: A number of commenters recommended that, in addition to referring to "grade level proficiency," the regulations list other indicators of program effectiveness such as criterion-referenced tests, reduction in dropout rates, and improved attendance. Commenters were concerned that the reference to "grade level proficiency" may perpetuate measurement of gains on the basis of grade equivalents, which research indicates are less valid and reliable than other measures.

Discussion: Section 200.1 of the regulations sets forth the purpose of the Chapter 1 Program in Local Educational Agencies and, basically, repeats the language in section 1001(b) of the Act. The intent of § 200.1 is to state the purpose for the Federal financial assistance and not to provide specific indicators of program effectiveness. In § 200.6(c) of the regulations, the terms "aggregate performance" and "desired outcomes" are defined. The latter definition includes a list of possible indicators for measuring program effectiveness. The list includes criterion-referenced tests, lower dropout rates, and improved attendance.

Changes: No change has been made to § 200.1, but definitions for the terms "aggregate performance" and "desired outcomes" have been added in § 200.6(c).

Section 200.3 Who is Eligible for a Subgrant?

Comment: One commenter recommended clarifying that the types of subgrants—basic and concentration grants—are allocations rather than subgrants, and that the LEA actually applies for and receives a single grant.

Discussion: Although sections 1005 and 1006 of the Act refer to "basic grants" and "grants for local educational agencies in counties with especially high concentrations of children from low-income families," an LEA does not receive two separate grants. Section 200.3 of the regulations reflects the statutory language by referring to the two allocations as grants. However, an LEA submits a single application for funds under both authorizations and is not required to account separately for the amounts received under the two allocations.

Changes: None.

Section 200.4 What King of Activities May an LEA Conduct?

Comment: One commenter felt that, because a librarian and a library serve the entire school, acquiring books and library materials and training librarians would dilute funds from benefitting educationally deprived children.

Discussion: The intent of § 200.4(c) is to demonstrate the range of activities that may be supported with funds under this part. The activities, however, are authorized only if the services, materials, and staff members paid for with grant funds are used to meet the special educational needs of educationally deprived children.

Changes: Section 200.4(c) has been revised to clarify that all the authorized activities must meet the special educational needs of educationally deprived children.

Comment: Two commenters suggested that, to be consistent with the definition of "pupil services personnel" in section 1471 of the Act, school psychologists and school social workers be mentioned at the beginning of the regulations. One of these commenters offered a lengthier list of persons who comprise pupil services personnel.

Discussion: Since section 1471 of the Act includes school counselors, school social workers, and school psychologists in the definition of "pupil services personnel," the Secretary does not believe the regulations need to repeat the list in § 200.4(c). However, the Secretary has added pupil services personnel to other sections of the regulations to emphasize their possible contribution to Chapter 1 projects.

Changes: Sections 200.20(a)(10), 200.34(c), and 200.34(e) have been revised to include pupil services personnel.

Comment: One commenter suggested that language be added to § 200.4(d) to state that the 5 percent limitation for innovation projects does not preclude using other funds to carry out these activities. Another commenter questioned whether regular Chapter 1 funds may be used for training non-Chapter 1 paid staff who serve educationally deprived children.

Discussion: Chapter 1 funds may be used for activities contained in § 200.4(c) of the regulations. In most circumstances, these would include the activities contained in § 200.4(d)(2) (iii)–(vii), but not § 200.4(d) (i) and (ii). Permitting the LEA to use up to and including 5 percent of its allocation for innovation projects is an incentive for LEAs to devote resources to improve the quality of the program and provide additional flexibility.

Changes: None.

Comment: One commenter suggested that the general project resource allocation procedures for LEAs in § 200.33 are inconsistent with the innovation project provisions of § 200.4(d).

Discussion: The Secretary believes that one of the purposes of innovation projects is to provide the LEA with additional flexibility to improve the quality of the Chapter 1 LEA Program. Therefore, the allocation of resources under § 200.4(d) may not be consistent with the allocation of resources under § 200.33. However, the decision to conduct an innovation project is left to the discretion of the LEA.

Changes: None.

Comment: One commenter requested that the provision of continued services for participants who are transferred to ineligible areas or schools as part of a desegregation plan in § 200.4(d)(2)(ii) be clarified to indicate that the provision may be used in conjunction with § 200.31(c)(1), which allows the continuation of services during the same school year.

Discussion: The Secretary agrees that a participant may continue to be served during the remainder of the school year in which the transfer occurs and up to two additional years under an innovation project.

Changes: Section 200.4(d)(2)(ii) has been changed by adding the word "additional" to the provision.

Section 200.5 What Regulations Apply to the Chapter 1 LEA Program?

Comment: Several commenters noted that this section was helpful but requested that the Department, in addition to using CFR (Code of Federal Regulations) citations, list the **Federal Register** citation for each regulation including day, month, year, and page number.

Discussion: Amendments to the CFR are made periodically. Therefore, if **Federal Register** citations were included in the regulations, they would soon be out of date and readers may infer incorrectly that later changes would not apply to the program. In addition to publishing changes in the **Federal Register**, the Department notifies SEAs of all changes to the regulations.

Changes: None.

Comment: Several commenters provided positions on the applicability of EDGAR, suggesting that States must follow the cost principles and guidelines of EDGAR; that States should use their own financial management procedures; or that either all of EDGAR should apply or notations should be made to the extent it does not apply. One commenter suggested exactly what was proposed. In addition, commenters requested clarification regarding the relationship of the requirements in EDGAR and Chapter 1 in the following areas: Definition of equipment, particularly the increase in applicable acquisition cost; time and effort flexibility; line item budget changes; carryover; and financial reports from LEAs.

Discussion: In order to provide additional guidance and to ensure that Chapter 1 funds are spent only for authorized program purposes, the Secretary has made certain provisions of EDGAR applicable to programs under this part. In determining which provisions to apply, the Secretary carefully balanced the need for basic program accountability with the important principle of minimum Federal interference in State and local affairs. In particular, the final regulations allow States to use their own procedures to ensure accountability with respect to matters governed by two Office of Management and Budget (OMB) circulars: A–102 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), codified for programs of the Department in 34 CFR Part 80; and A–87 (Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments) as amended on January 28, 1981. Only if a State chooses not to apply its own procedures would the provisions in these parts of EDGAR apply to the Chapter 1 LEA Program.

If a State wishes to use its own procedures instead of the two OMB circulars implemented in EDGAR, the final regulations require that the State's procedures meet three general criteria, set forth in § 200.5(a)(4)(i)–(iii), that are designed to ensure the minimal standards necessary for proper management of Chapter 1 funds. A State may adopt new procedures, or may use accountability procedures applicable to the use of its own funds, if those procedures meet the general criteria. The State's procedures do not have to be submitted to the Secretary for approval, but must be available for Federal inspection. If a State does not have its own written requirements implemented by July 1, 1989, but wishes to develop them, the requirements in Part 80 and Appendix C to Part 74 apply until such time as the State's written requirements are adopted. In the event a State's requirements are determined to be insufficient, the enforcement provisions in Part E of GEPA apply, including the due process provisions in that part. During the transition period provided for in section 1491(c) of the Act, a State may continue to comply with the requirements under Chapter 1 of the ECIA.

The Secretary wishes to emphasize that States have complete discretion, subject to meeting the general criteria set forth in § 200.5(a)(4)(i)–(iii), to use their own procedures instead of the procedures in the two OMB circulars. Moreover, Circular A–102 has recently been revised to permit States to apply their own procedures to LEAs. As a result, even if a State chooses to adopt the procedures of that circular, it would still have considerable flexibility in determining the appropriate standards for accountability at the local level. Circular A–87 is currently being revised.

In addition, the final regulations make applicable a limited number of provisions from Part 76 (State-Administered Programs); Part 77 (Definitions That Apply to Department Regulations); Part 78 (Educational Appeal Board); and Part 81 (General Education Provisions Act—Enforcement). The Secretary believes these minimal requirements will help to ensure basic accountability without imposing undue burden and paperwork on SEAs and LEAs.

Changes: The criteria that a State's procedures must "result in the efficient and effective administration of programs under this part" has been deleted from § 200.5(a)(4). With regard to the comments regarding clarification of the relationship of certain EDGAR requirements and Chapter 1 requirements, the Department will provide appropriate clarification in the policy manual in accordance with section 1436(b)(2) of the Act

Section 200.6(c) Other Definitions

Comment: A number of commenters recommended revisions to the definition of "in loco parentis." Specifically, one commenter recommended that the LEA agree to recognize any adult designated as "in loco parentis." Another commenter recommended that the SEA be allowed to use the State's legal definition of "in loco parentis." Several commenters recommented that the definition be revised to require that the parent or legal guardian make the designation in writing.

Discussion: The defintion of "parent" in section 1471 of the Act includes a person standing in loco parentis. Typically, this person would be the one with whom the child lives and is often a relative of the child. In some instances, the parent or legal guardian may wish another person to be responsible for the child's education, including the Chapter 1 program. This person must be designated by the parent or legal guardian. However, it is not the intent of the regulations that the designation of a person "in loco parentis" be the Chapter 1 program only with the parent or legal guardian retaining authority with regard to the regular program of instruction in the school. The regualtions do not require that the designation be in writing. Specific procedures for designating a person to stand in loco parentis are left to the discretion of SEAs and LEAs.

Changes: The definition of "parent" in § 200.6(c) has been revised to clarify that "in loco parentis" means either the person with whom a child lives or, in some instances, another person designed by the parent or legal guardian to be responsible for the total educational program of the child.

Comment: Three comments were received on the definition of "educationally deprived children." One commenter questioned whether the definition required the use of standardized, norm-referenced achievement tests to determine which children are below the level appropriate for their age. A second commenter suggested that the definition be revised to include children who score below the 50th percentile or normal curve equivalence score in reading, language arts, or mathematics. Lastly, one commenter felt that there was a lack of congruity between the goal of helping children attain grade level proficiency

and the definition for children retained in grade. The commenter noted that retained children may be able to perform at grade level even though their achievement is not appropriate for children their age.

Discussion: Section 200.31(b) requires that the LEA identify educationally deprived children in all eligible school attendance areas but does not provide specific criteria, measures, or procedures to be used. The Secretary believes that these decisions should be made by SEAs and LEAs to reflect local conditions. As to the perceived conflict between the program purpose and the definition, age has been used to define "educationally deprived children" in recognition that for various reasons children may not be in a grade appropriate for their age. Therefore, for the purpose of identifying educationally deprived children, age is a more appropriate factor than grade.

Changes: None.

Comment: One commenter recommended that the definition of "preschool children" be modified to clarify that the children are below the age or grade the LEA is required to provide free public education, since some school districts voluntarily provide programs for children before the compulsory attendance age.

Discussion: The intent of the definition is to implement section 1014(a) of the Act, which provides that among the chidren eligible for services are those who are not yet at a grade level for which the LEA provides a free public education. This, in an LEA that provides kindergarten for five-year-olds either voluntarily or because of State law, "preschool children" are those children who are not old enough for kindergarten. If the requested modification were made, an LEA might think that it could use Chapter 1 funds to provide a "preschool" program for some children while it used local funds to provide the same program for other children, because the LEA was not required to provide the program to any of the children. This use of Chapter 1 funds would violate the supplement, not supplant requirement in section 1018(b) of the Act. If an LEA is voluntarily providing kindergarten, for example, Chapter 1 funds may be used to provide supplemental services to eligible children just as at other grades. Classifying those children as "preschool children" would not be necessary.

Changes: None.

Comment: Two comments were received on the definition of "school attendance area." One commenter requested clarification of "voluntary basis." The second commenter believed that a portion of the definition, which refers to a school a child would attend if the child were not attending a private school or another public school on a voluntary basis, is confusing.

Discussion: Eligibility of school attendance areas for Chapter 1 services is determined on the basis of the number of percentage of low-income children residing in that area. The definition provides a way to count children attending private schools, either in the attendance area or outside it, and also counts children who voluntarily attend another school under an open enrollment policy or a desegregation plan.

Changes: None.

Comment: Several commenters noted that § 200.6(a) refers to the definition of "more advanced skills" contained in section 1471 of the Act, but that no definition of "basic skills" is included. Commenters suggested that the regulations contain a definition of "basic skills."

Discussion: As commenters noted, the definition of "more advanced skills" appears in the statute, but the term "basic skills" is not defined. The Secretary believes that, although there is some general agreement that basic skills include those skills needed in order to read and compute, States often have varying definitions of the term. The Secretary believes a national definition for Chapter 1, which might conflict with those of the States, would cause unnecessary difficulty and is not needed.

Changes: None.

Section 200.20 How Does an LEA Apply for a Subgrant?

Comment: One commenter suggested that § 200.20(a)(5) include a reference to children in adult correctional institutions.

Discussion: The omission of a reference to children in adult correctional institutions was inadvertent.

Changes: Sections 200.1 and 200.20 have revised to include children in local correctional institutions in addition to those in institutions for neglected or delinquent children.

Comment: Many commenters objected to the requirement in § 200.20(a)(8) that the LEA submit to the SEA copies of salary schedules and policies to ensure compliance with the comparability of services requirements in § 200.43 of the regulations. Commenters believed that the requirement created duplicative, burdensome, and unnecessary paperwork. In addition, commenters noted that salary schedules could become outdated by the time an application for funds was approved. As an alternative, several commenters recommended that the requirements be revised to require that the LEA maintain on file copies of salary schedules and the policies required by § 200.43.

Discussion: Section 1018(c) of the Act states that, as means of demonstrating comparability, an LEA may provide a written assurance that it has established and implemented a district wide salary schedule; a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies. The intent of the proposed regulations was to provide the SEA with the salary information and policies for review prior to approving the application, minimizing the LEA's risk of subsequently being found to be out of compliance with the requirement. However, the Secretary does not want to impose unnecessary paperwork burden, especially since section 1018(c) of the Act states that an LEA shall be considered to have met the comparable services requirements if it files with the SEA the appropriate written assurance. In any case, the LEA must comply with the comparable services requirements in § 200.43, and the SEA must monitor the LEA's compliance with the requirements.

Changes: Section 200.20(a) has been revised to remove the provision requiring that the LEA include with its application a copy of its salary schedule and policies.

Comment: Two commenters suggested the deletion of the provision requiring the LEA to submit in its application data showing that the LEA maintained fiscal effort. The commenters noted that the Act did not specifically require that the data be in an application.

Discussion: The Secretary understands that many SEAs collect and maintain expenditure data in a form that allows determinations that LEAs have maintained fiscal effort. Therefore, to require LEAs in those States to provide that information in an application would be duplicative and unnecessary.

Changes: Section 200.20(a)(7) has been revised to require that data demonstrating maintenance of fiscal effort be included in the application only if the data are not otherwise available to the SEA.

Comment: Three commenters took exception to the provision that allowed the SEA to require LEAs to submit any other information it finds necessary to ensure compliance with the LEA application assurances in

§ 200.20(a)(10). One commenter suggested that either the assurances or information demonstrating compliance should be required, but not both. Another commenter believed that this requirement is vague and questioned what information an SEA would require to determine compliance with the assurances. On the other hand, another commenter requested that the provision be expanded to cover any information the SEA needs to ensure compliance with the requirements under this part.

Discussion: Although the commenters indicated concern over possible burden an SEA may impose on LEAs by explicitly stating that additional information may be required in an LEA's application, the SEA has responsibility for determining that what is proposed in an application meets the requirements of the Act and the regulations. An SEA may determine that the assurances in § 200.20(a)(10) are insufficient to determine that LEAs will be in compliance. However, the Secretary is concerned about the possible paperwork burden.

Changes: Section 200.20(a)(10) has been changed to clarify that any additional information is to be required with the least possible paperwork and burden.

Comment: Three commenters suggested that because § 200.20(a)(4) requires a description of the desired outcomes for children participating in the Chapter 1 project, in terms of basic and more advanced skills, the term "more advanced skills" should be defined in the definition section of the regulations.

Discussion: Section 1471 of the Act includes a definition of the term "more advanced skills." Section 200.6(a) of the regulations incorporates into the regulations definitions of all terms included in section 1471. Therefore, no further definition of the term is necessary.

Changes: None.

Comment: Two comments were received concerning the requirement in § 200.20(a)(5) that the application include a description of the services to be provided to eligible children enrolled in private elementary and secondary schools. One commenter recommended deletion of the provision since section 1012(c) of the Act requires only an assurance that the LEA has made provisions for services for private school children. Another commenter suggested that the application need only describe services for children enrolled in private schools on a districtwide basis and not on a school-by-school basis.

Another commenter recommended that the budget required by § 200.20(a)(3) include a listing of the proposed expenditures for private school children to demonstrate that the LEA plans to make equal expenditures for eligible children enrolled in private schools.

Several commenters suggested that additional assurances be required of an LEA concerning the provision of services to eligible children enrolled in private schools. One commenter recommended that the LEA provide an assurance that it is implementing requirements for services to private school children in §§ 200.50 through 200.58. Other commenters requested an additional assurance that private school officials were consulted, with one commenter suggesting that an appropriate private school official's signature be part of the assurance.

Discussion: Given the statutory requirement to serve eligible children enrolled in private schools and the requirement that the application include a description of projects to be conducted, the Secretary believes that, in addition to an assurance that private school children will be served, a description is needed in order for the SEA to approve the application. The description need only describe services to be provided for all eligible attendance areas selected for participation in the program and not separately for each attendance area, and should provide sufficient information for the SEA to determine that the services ensure equitable participation in accordance with §§ 200.50 through 200.58.

Section 200.20(a)(3) of the proposed regulations required that the project description include a budget for the initial project year. As part of that budget, the Secretary agrees that the budget should be of sufficient detail to show proposed expenditures for both public and private school children.

Changes: Paragraphs (a)(3) and (d)(3) of § 200.20 have been revised to clarify that the budget include proposed expenditures for services to both public and private school children. In addition, § 200.20(a)(5) has been changed to require that the description of services for eligible children enrolled in private schools be provided to ensure the equitable participation of the children in accordance with §§ 200.50 through 200.58.

Comment: One commenter requested that the assurance in § 200.20(a)(10)(ii) of the proposed regulations be revised to include pupil services personnel in the group to be consulted concerning the design and implementation of the project.

Discussion: The Secretary agrees that pupil services personnel, with their knowledge and skills concerning parents, families, and support services, can play an important role in designing and implementing projects.

Changes: Section 200.20(a)(10)(i)(B) has been changed to include pupil services personnel in the assurance concerning consultation.

Comment: One commenter requested that § 200.20(a)(10)(iv) of the proposed regulations, which refers to coordinating the Chapter 1 curriculum with the regular instructional program, provide for an examination of the regular program of instruction to determine whether practices related to that instruction were contributing to Chapter 1 children's lack of achievement. The commenter made a similar request for § 200.37(a)(2)(iv)(D) of the proposed regulations, which refers to improving coordination with the regular school program.

Discussion: The proposed regulations concerning coordination of the instruction provided with funds under this part with the regular instructional program stem directly from sections 1012(c) and 1021(b)(1)(A)(ii) of the Act. Given that one of the purposes of the assistance under this part is to help educationally deprived children succeed in the regular program, coordination between the instructional programs would seem to be essential. The Secretary agrees that the required coordination of services includes an examination of practices and procedures under both the Chapter 1 program and the regular program. To examine one and not the other precludes any genuine efforts to coordinate services.

Section 200.1(b) of the regulations reflects the statutory purpose of the program—helping participating children succeed in the regular program. Both statutory requirements for coordinating the services are included in the regulations.

Changes: Section 200.20(a)(10) and 200.27(a)(2) have not been revised, but § 200.35(a)(1)(ii) has been added to the regulations, which requires an LEA to include in its evaluation a review of Chapter 1 children's progress in the regular program.

Section 200.23 How Does an SEA Allocate County Aggregate Amounts?

Comment: Commenters recommended that the regulations include alternative methods of identifying low-income students such as school lunch and Aid to Families with Dependent Children (AFDC). Also recommended was language requiring SEAs to allocate funds to LEAs in the county on the basis of a uniform measure of poverty.

Discussion: Section 200.23(b)(1) of the regulations requires that the SEA allocate the county aggregate amount to LEAs in the county on the best available data on the number of children from low-income families in the LEAs. No specific method is identified in the regulations so it should be understood that a variety of methods may be used. The Secretary agrees that, in accordance with section 1005(a)(2) of the Act, the allocation among LEAs must be on an equitable basis; therefore, a uniform measure of low-income must be used for all LEAs in the county.

Changes: Section 200.23(b)(1) has been modified to require that the SEA shall use a uniform measure of low-income in the county.

Comment: One commenter suggested that when an LEA serves children from another LEA, the SEA should not adjust the LEA's allocation and that the two LEAs should devise a plan together to provide services to the students.

Discussion: Section 200.23(b)(2)(iii) suggests that an SEA may adjust allocations or permit the LEA individually or in cooperation with another LEA to carry out the project. There is no requirement that the SEA must adjust an allocation in such a circumstance.

Changes: None.

Comment: One commenter questioned if the State could require the LEA to spend additional funds or provide additional services to the neglected or delinquent institutions if the State finds that services being provided are insufficient.

Discussion: If the LEA receives an allocation for children in a local institution, the LEA must include the children residing in the institution in its annual needs assessment. Resources are allocated to schools on the basis of the number and needs of children to be served, including children in the local institution. The LEA must address the needs of the children in the institution. Some of the children may be served in public schools by the Chapter 1 LEA Program while others may be served in the institution. Decisions on the resources made available are made by the LEA on the basis of its annual needs assessment. The SEA has the responsibility for approving applications and monitoring the LEA's compliance with requirements.

Therefore, in certain situations, the SEA could require an LEA to provide additional resources for children in institutions.

Changes: None.

Comment: One commenter requested clarification on whether the SEA should adjust an LEA's allocation on a prorated basis if a neglected or delinquent institution closes.

Discussion: If a neglected or delinquent institution were to close before the beginning of the school year, the funds would be transferred to the LEA in which the institution to which the students would be transferred is located. If the institution were to close in the middle of the school year, the LEA would have met its obligation for serving those students and there is no statutory requirement to adjust its allocation.

Changes: None.

Comment: One commenter requested that the minimum allocation (fewer than 10 children) language in § 200.23(b)(3) apply to this section in regard to services to children attending neglected or delinquent institutions and private schools.

Discussion: The language in section 1005(b) of the Act refers to the total number of children to be counted for purposes of allocation of funds and not to numbers of children eligible to be served. In determining the number of children for purposes of allocations, children who attend private schools or are in neglected or delinquent institutions are counted. The "fewer than 10 children" language applies only when the entire LEA has fewer than 10 children to generate funds.

Changes: None.

Section 200.25 How Does an SEA Allocate Concentration Grants to an LEA?

Comment: Commenters recommended the retention of a unified allocation to counties of basic and concentration grants but also recommended that the regulations specify that SEAs need not issue differing regulations to govern the two types of grants.

Discussion: Although not stated in the proposed regulations, this is the Secretary's intent.

Changes: Section 200.25(c) has been added to clarify that regulations governing basic grant funds also apply to concentration grant funds.

Comment: Two commenters suggested that regulations be developed for those districts that are located in more than one county.

Discussion: The same principles included in § 200.23(b)(2)(i) in regard to the basic grant allocation for districts that overlap county lines apply to concentration grants.

Changes: None.

Comment: One commenter questioned whether each LEA would receive concentration grant funds if every LEA in the State meets the eligibility requirements.

Discussion: If an LEA meets the eligibility requirements as defined in § 200.3(c)(1), it will receive concentration grant funds. Therefore, if every LEA meets the eligibility requirements, each would receive an appropriate proportion of concentration grant funds from the SEA.

Changes: None.

Comment: One commenter questioned if an LEA composed of twelve town school districts would be required to demonstrate how funds are spent town by town or for the LEA as a whole.

Discussion: As with basic grant funds, the LEA is not required to account for expenditure of its concentration grant funds among subunits. Neither will the LEA be required to account separately for basic and concentration grant funds.

Changes: None.

Comment: One commenter questioned what to do if a school does not want a concentration grant.

Discussion: An LEA, not a school, is eligible for concentration funds. Therefore, the school does not have the option to decline a concentration grant.

Changes: None.

Comment: Commenters requested that "eligible LEA" be clarified to mean "eligible LEA for concentration grant."

Discussion: The Secretary agrees this clarification would be helpful.

Changes: Throughout § 200.25, the term "eligible LEAs" has been revised to clarify that the LEA is eligible for concentration grant funds.

Comment: One commenter suggested that all funds be distributed by the SEA to eligible LEAs in proportion to the number of children from low-income families in the school district.

Discussion: Section 1006 of the Act requires distribution of concentration grants to those LEAs that meet the eligibility criteria.

Changes: None.

Comment: One commenter questioned if it would be possible to rank order those eligible LEAs that are in ineligible counties applying for concentration grants or if all that apply must receive funds.

Discussion: For those LEAs that are located in ineligible counties, the SEA may reserve not more than 2 percent of concentration grant funds to make direct payments to those LEAs. SEAs must rank order those LEAs to determine concentration grant payments. Since determinations of poverty in LEAs by States are often based on criteria other than those used to determine eligilitity of counties, there may be some States in which there are several LEAs eligible, based on criteria States use, that are not located in counties that receive

allocations. The ranking procedure will allow SEAs to allocate funds to those LEAs in greatest need.

Changes: Section 200.25(b)(1) has been revised to clarify that LEAs in ineligible counties will be rank ordered to receive concentration grants from the 2 percent portion of the total concentration grant amount the SEA may reserve for those LEAs.

Comment: One commenter was concerned that the mixing of two data sources to allocate basic and concentration grants would be cumbersome and could result in some inequities.

Discussion: The Secretary agrees that concentration grants are to be allocated on the basis of the same data sources as are basic grants as described in § 200.23 or § 200.24 of the regulations.

Changes: Section 200.25 has been modified throughout to refer to the current number of children counted for the purposes of § 200.23 or § 200.24. Section 200.23 has been revised to state that the SEA shall use a uniform measure of poverty to determine the number of children from low-income families.

Comment: Commenters recommended that the regulations be changed to clarify that the term "proportion of low-income families" refers to children counted under either the 15 percent or the 6,500 criteria, not just the 15 percent.

Discussion: The Secretary concurs that the clarification would be helpful.

Changes: Section 200.25 has been revised accordingly.

Section 200.26 How Does an SEA Reallocate Funds?

Comment: Two commenters stated that there is a conflict between the maintenance of effort and reallocation requirements. One section indicates that SEAs are to reallocate funds if an LEA fails to maintain effort and the other that SEAs are to proportionally reduce the allocation. One of the commenters suggested that present policy regarding failure to meet maintenance of effort requirements is better.

Discussion: The Secretary agrees that the proposed wording of § 200.26(a)(ii) was not clear and appeared to say that an LEA that failed to maintain effort would not have already had its allocation reduced.

Changes: Section 200.26(a)(ii) has been revised accordingly.

Comment: One commenter suggested that giving comparable data to demonstrate an increase in low-income children since 1980 is impossible for States that retain data on free milk, and free lunch, and AFDC for only five years as required by law and not nine years as would be required by this interpretation.

Discussion: Section 1403(b) of Act requires that funds be reallocated only to those LEAs where distribution of funds under the formula in section 1005 has resulted in inequity "as a result of such factors as population shifts or changing economic circumstances." Unless the data on which the original distribution was made have been retained, a determination of these shifts and changes cannot be made.

Changes: None.

Comment: Several commenters requested clarification on census undercounts or overcounts. One asked if a documented census undercount would be considered an inequity in the application formula. The others requested additional language to cover estimated overcounts or undercounts of individuals from the most recent decennial census.

Discussion: The issue of census undercounts and overcounts will be discussed in the policy manual. In reference to the question regarding an inequity in the formula, section 1005(c)(2)(a) of the Act requires that the count of children be based "on the most recent satisfactory data available from the Department of Commerce," whereas section 1403(a)(2) refers to factors such as population shifts and changing economic circumstances. Therefore, the Secretary does not think alleged undercounts form a basis for reallocation.

Changes: None.

Comment: One commenter questioned whether the comparison with 1980 data also holds for the neglected and delinquent caseload data, or if it can be determined on a current basis.

Discussion: Section 200.26(b)(2)(ii) discussed one of the factors that may cause inequities in the formula which is "caseload data used in the allocation that are not representative of the number of neglected or delinquent children in local institutions." However, caseload data are collected annually, not based on 1980 data. If the State determines that the caseload data used for initial allocation were not accurate, that inaccuracy is a basis for reallocating funds to the LEA.

Changes: None.

Section 200.30 How Does an LEA Select School Attendance Areas to be Project Areas?

Comment: One commenter supported the option to continue to serve schools one year beyond the year at which they cease to be selected for participation, but the commenter recommended it be stipulated that schools served under this provisions not replace schools selected to operate a Chapter 1 project.

Discussion: Although consensus was reached by the negotiated rulemaking groups on project areas, the group did not consider whether schools identified as eligible under any of the special rules in § 200.30(b) could replace schools determined to be eligible under the general rule in § 200.30(a). It is not the intent of § 200.30(b)(5) to deny Chapter 1 services to any eligible school but to provide continued services for one additional year to a school that was eligible and served the previous year but, in the absence of this provision, would not be selected to participate in the Chapter 1 project. However, if an LEA does not have sufficient funds to add services to a school that is now eligible and could be served, but received no services the previous year, the LEA may choose to continue services in the formerly served school this year and not serve the school that would otherwise participate.

Changes: Section 200.30(b)(5) has been revised to provide that a school attendance area that continues to be served under the continuation provisions may take the place of an otherwise eligible school attendance area that could be served.

Comment: One commenter recommended that LEAs be allowed to select eligible attendance areas by using a combination of percentage and average number of children from low-income families.

Discussion: The use of a combination of percentage and number of children from low-income families has been an acceptable procedure for identifying eligible attendance areas under Chapter 1 (ECIA). To meet the requirement for targeting resources on a limited number of school attendance areas with the highest concentration of children from low-income families, the procedure limited the number of eligible attendance areas to the number it would have identified if it had used only one of the methods.

Changes: Section 200.30(a)(2)(B)(ii) has been added to allow an LEA to use a combination of percentage and number of children from low-income families in identifying eligible areas, except that the total number of eligible attendance areas may not exceed the number of attendance areas the LEA would have identified as eligible if it had used only one of the methods.

Comment: One commenter recommended that the exemption in § 200.30(d) be expanded to include an LEA with not more than one school building for each grade span in order to

prevent unnecessary paperwork for qualifying LEAs.

Discussion: If an LEA has only one school building for each grade span, that school is automatically eligible for Chapter 1 services.

Changes: Section 200.30(d)(2) is added specifically to exempt an LEA from identifying eligible attendance areas if the LEA has no more than one school attendance area at each grade span.

Comment: One commenter was concerned that the language used in discussion of concentration of services is too lax and requested stronger and more clarifying language to ensure that schools provide services in the area identified as most in need.

Discussion: Paragraphs (a) (2) and (3) of § 200.30 require LEAs to rank schools on the basis of concentrations of low-income children and select schools on the basis of that ordering. Section 200.32 requires LEAs to establish projects of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the needs of educationally deprived children. Section 200.33(a) requires LEAs to allocate funds among schools on the basis of the number and needs of children in each school. The Secretary believes that, taken together, the provisions provide for sufficient concentration of services commensurate with statutory requirements.

Changes: None.

Comment: Several commenters requested clarification to allow an LEA to waive a needs assessment requirement at certain grade levels if it determines that funding is inadequate to provide services in all grade levels.

Discussion: Section 1014(b) of the Act provides that an LEA may receive Chapter 1 funds only if it makes an assessment of educational needs each year to identify educationally deprived children in all eligible attendance areas. An assessment of educational needs must be made at all grade levels to determine the areas and grade levels of greatest need. The regulations accurately reflect the legislative requirement that an assessment of educational needs be made each year in all eligible attendance areas.

Changes: None.

Comment: One commenter requested that the special rule in § 200.30(b)(1) should clarify the 5 percent above or below the average concentration of low-income children and if all schools must be served when an LEA implements this provision. Others recommended that the regulations be changed to allow the LEA to use this provision if the school with the highest concentration of low-income children was within ten percentage points of the school with the lowest concentration of these children in a grade grouping or the entire LEA. Another commenter requested that the no-wide-variance rule now established be applied only to the variation below the LEA average concentration of these children because attendance areas above the average are already eligible.

Discussion: The House Report and Senate Report, which provide the legislative history for Pub. L. 100–297, make Congressional intent clear that in order for LEAs to apply the no-wide-variance provision, the variation from the districtwide poverty average is no more than five percent. This provision provides additional specificity to the previous Chapter 1 provision allowing LEAs to serve all their school attendance areas if they have uniformly high concentrations of poverty.

Changes: Section 200.30(b)(1) has been changed to make it clear that in order to apply this provision, the percentage of children from low-income families in each school attendance area is not more than five percentage points above or five percentage points below the average percentage of children from all low-income families within a grade span grouping or within the entire LEA.

Comment: Two commenters requested a clarification of the interchangeable use of the terms "attendance area" and "building," and the term "project."

Discussion: "Project" is defined in 34 CFR 77.1 to mean the activity described in an application. "School attendance area" means, in relation to a particular public school, the geographic area in which the children who are normally served by that school reside. The Secretary agrees that the use of the term "building" was inconsistent with other terminology in the regulations.

Changes: The term "building" in § 200.43(b) has been changed to "attendance area" to be more consistent with other terminology and to clarify the regulations.

Comment: Some commenters claimed that implementation of § 200.30(b)(2)(ii) would require excessive recordkeeping to implement the 25 percent rule and is too restrictive in the use of funds for students.

Discussion: The purpose of § 200.30(b)(2)(ii) is to ensure that funds under this part are targeted to areas with high concentrations of children from low-income families and that services for children already being served are not diminished in order to serve more schools under the 25 percent rule. This reflects the statutory requirement in section 1013(b)(2) of the Act.

Changes: None.

Comment: Two commenters requested that § 200.30(a)(3) clarify whether LEAs are required to have the same Chapter 1 program activity in all attendance areas or if the program activities could be different in some areas. The commenters stated that there appeared to be a conflict between this section and § 200.31.

Discussion: This provision is not in conflict with, but supports, § 200.31 of these regulations. The emphasis of Chapter 1 is to concentrate or target funds to the areas and students who have the greatest educational needs. Studies show that the children with greatest educational needs are those who reside in areas with high concentrations of low-income children. Consequently, the statute requires that LEAs annually rank the eligible attendance areas by relative degrees of concentrations of these children. The regulations reflect the intent of the legislation to concentrate funds on those children most in need of special educational services. Further, § 200.33(a) of the regulations, requiring LEAs to allocate funds to schools based on both the number and needs of children in the schools, and the school program improvement requirements for §§ 200.37 and 200.38, indicates that LEAs are not required to provide the same activities in all attendance areas.

Changes: None.

Comment: One commenter interpreted the ranking of attendance area provision to mean that the decision as to which schools will be served can be made immediately after the district ranks the attendance areas.

Discussion: In addition to ranking, LEAs must determine what level of services will be provided to the schools, and the cost of those services. They would then select attendance areas, in rank order, until all available funds are exhausted.

Changes: None.

Comment: One commenter questioned whether the comparison of the proportion of children from low-income families in § 200.30(b)(3)(i) to designate a school that serves an ineligible attendance area as an eligible school was with one eligible school or with the average of all eligible schools.

Discussion: Section 200.30(b)(3)(i) accurately states the intent of the Act. The LEA may compare the proportion of low-income children in any eligible attendance area.

Changes: None.

Comment: Two commenters recommended that school attendance areas be defined or expanded to allow the pairing or grouping of school

buildings having no overlapping grades. Commenters felt that unless this is done there will be a negative impact on Chapter 1 projects and comparability requirements.

Discussion: The term "school attendance area" is defined in § 200.6(c). The Department will address specific applications of these regulations by providing examples in the policy manual to apply to specific practices in LEAs with paired schools or in LEAs that use groupings of schools for attendance area selection and comparability.

Changes: None.

Comment: One commenter expressed a concern that the regulations do not exclude local institutions for neglected or delinquent children from the school attendance area ranking required by § 200.30(a) of the regulations.

Discussion: If the SEA determines that a local institution meets either the definition as an institution for delinquent children or an institution for neglected children as defined in § 200.6(c) of the regulations, children residing in the institution are eligible for services under this part regardless of where the children attend school. The institution need not demonstrate eligibility for services on the basis of the number of percentage of children from low-income families and, therefore, the institution is not included in the ranking of eligible attendance areas.

Changes: None.

Section 200.31 How Does an LEA Identify and Select Children to Participate?

Comment: Several commenters supported the special rule allowing the selection of limited English proficient children for Chapter 1 services on a basis other than English language deficiency by using various selection procedures. One commenter recommended that the regulations be identical to the statute regarding selection of limited English proficient students and that the description of alternative methods be deleted. The commenter believed that the regulations, specifically the alternative selection procedures in § 200.31(c)(5)(ii), provided a dual selection process—one for educationally deprived children and one for limited English proficient children. Still other commenters requested that the provision covering the selection of limited English proficient students for Chapter 1 be deleted and stated that the remaining student selection regulations are adequate, and that the LEAs are in the best position to distinguish between educational deprivation and language factors. Other commenters requested that language dominance tests be deleted or noted that the use of language dominance tests alone would result in selection of children solely on the basis of language difference, and not on the basis of educational deprivation.

Discussion: The negotiated rulemaking group agreed with the student selection requirements in § 200.31, including the clarification of the requirements for identifying and selecting children with limited English proficiency. In addition, the Conference Report that provides part of the history for determining Congressional intent in Pub. L. 100–297 states that LEAs may use current Chapter 1 assessment procedures for children who, with or without bilingual assistance in the testing process, can be identified, using tests written in the English language, as educationally deprived children in greatest need of assistance. For children whose lack of English language proficiency precludes valid assessment using tests written in the English language, local procedures to screen and select educationally deprived limited English proficient children may be used, e.g., teacher evaluation, language dominance testing, weighting factors, or others indicators of educational deprivation that discriminate on a basis other that just language deficiency. However, the Secretary agrees with the comment that language dominance tests that are used alone would result in the selection of students solely on the basis of language difference.

Changes: Section 200.31(c)(5)(ii) of the regulations has been modified to require that language dominance tests be used only in combination with other measures to select children for Chapter 1.

Comment: One commenter suggested that Chapter 1 services should not be altered to meet a student's limited English proficiency or address a handicapping condition. Yet another commenter was concerned that the difficulty of discerning between learning disabilities, mild retardation, and limited English proficiency will cause classroom teachers not to recommend students for special education evaluation if they know Chapter 1 will select these students.

Discussion: The Secretary believes further regulation on this matter would restrict the LEA's options to assess the needs of students and to plan programs that best meet their educational needs. Local officials must use their best professional judgments in placement of children in educational programs. In designing Chapter 1 services, some individual differences may need to be addressed for children with handicapping conditions or lack of English language proficiency on the same basis that individual differences require alternative approaches with other Chapter 1 participants. LEAs must have discretionary authority in planning Chapter 1 activities that best meet the needs of educationally disadvantaged children and to coordinate Chapter 1 activities with services to children with handicapping conditions and limited English proficiency.

Changes: None.

Comment: One commenter requested adding a provision that would not require that an LEA provide services to handicapped or limited English proficient children if it determines that two services would fragment the students' basic classroom program, or if other students are waiting and have no services to meet their basic and advanced skills needs.

Discussion: An LEA must consider alternative approaches to educating children and provide the best education program that is possible regardless of the child's educational levels or needs. Fragmented programs result in poorer student achievement and inefficient use of student and instructional time. Section 1012(e)(4) of the Act requires an LEA to assure that, in the case of participating students who are also limited English proficient or are handicapped, it will provide maximum coordination between services provided by Chapter 1 and services provided to address children's handicapping conditions or limited English proficiency, in order to increase effectiveness, eliminate duplication, and reduce fragmentation of the students' programs. Section 200.20(a)(1)(v) requires LEAs to provide maximum coordination between Chapter 1 services and services provided to address children's handicapping conditions or limited English proficiency.

Changes: None.

Comment: One commenter requested clarification to ensure that in identifying and selecting students with limited English proficiency as eligible educationally deprived children, LEAs use valid assessment measurements. The commenter was concerned that, in addition to tests written in English, other assessment procedures, also dependent on English proficiency, would yield invalid assessments of educational achievement.

Discussion: The intent of § 200.31(b)(6)(ii)(B) of the proposed regulations was to provide LEAs with alternatives for identifying and selecting children with limited English proficiency for services. The Secretary shares the

commenter's concern that assessment procedures, including tests, produce valid results to ensure that children with limited English proficiency are properly identified and selected for participation in the Chapter 1 LEA Program.

Changes: The term "test" in § 200.31(b)(6)(ii)(B) has been changed to "valid assessment."

Comment: One commenter questioned how a teacher who does not speak a child's language can select a child who does not speak English other than on the basis of English language deficiency. Another commenter was concerned that some educators may lack the expertise to determine which needs stem from a child's handicapping condition and which needs stem from a child being educationally disadvantaged.

Discussion: The Department is currently preparing additional guidance on this topic, which will be included in the Chapter 1 policy manual. In addition, State and local agencies may ask the Technical Assistance Centers (TACs) for assistance on this matter.

Changes: None.

Comment: One commenter questioned what the needs assessment should cover in order to identify participants' need for library resources. Another commenter questioned how library resource needs for Chapter 1 are limited to avoid duplication of a school's general need for library resources and why library resources are not already included under special educational needs. Another commenter suggested deletion of the library resource needs in the regulation to avoid instances of supplanting.

Discussion: An LEA may determine the personnel, materials, and library resources necessary to meet the special educational needs of participating children. If these resources are not available in the regular school to meet the needs of the Chapter 1 children, then Chapter 1 funds may be used to supplement those resources.

Changes: Section 200.3(b)(6) has been changed to clarify that in addition to determining the special educational needs of participating children, the LEA must determine the personnel, instructional materials, and library resources necessary to meet the special educational needs of the participating children.

Comment: One commenter suggested that § 200.31 should redefine the term "educationally deprived" so that the specificity of the statement allows for equal identification and selection of students in elementary and secondary schools and graded and nongraded situations.

Discussion: The definition of educationally deprived children contained in § 200.6 is the same as that used under Chapter 1, ECIA and Title I, ESEA. The definition was a topic of discussion at regional meetings conducted by the Department to solicit input on the regulations and during the negotiated rulemaking demonstration that followed the meetings. There was general agreement, with which the Secretary concurs, that the definition should continue to be the same as it was in the predecessor programs. The Secretary believes the definition provides the necessary guidance and flexibility for LEAs to select elementary and secondary school students in both graded and nongraded schools.

Changes: None.

Comment: Two commenters requested clarification of the special rule in § 200.31(c)(3) that allows LEAs to serve students for an additional two years. One commenter questioned whether a district could serve students who previously had the greatest need over those who are now in the greatest need.

Discussion: Some students who have received Chapter 1 services and who continue to be educationally deprived but are no longer in greatest need for special assistance need some extra reinforcement or support to ensure that they maintain their gains. The LEA may serve these children before serving those presently in greatest need. The determination to implement the provision is up to local school officials.

Changes: None.

Comment: Several commenters expressed concerns over the use of objective and subjective information in the needs assessment process. Commenters questioned how objective criteria differed from assessment criteria; suggested that subjective data such as teacher assessment should be permissible for selection of students; expressed opposition to the use of teacher evaluation of student's performance for student selection, requested clarification on the meaning of "establish educationally related objective criteria;" suggested that criteria should be applied uniformly at all grade levels serving a particular curriculum area so there is consistency in serving students in greatest need; and proposed modifying § 200.31(b)(4) to read: "uniformly apply the criteria required in paragraph (b)(3) of this section to particular grade levels having a specific component as identified in the needs assessment."

Discussion: The Secretary is aware that selection of students to participate in the Chapter 1 program may involve a combination of several factors, and believes LEAs are best situated to determine which factors best fit the local situation. Further, the Secretary concurs that in order to identify those students in greatest need of special educational assistance and to select the areas of service and the grade levels to be served, the LEA must uniformly apply the same objective measurements appropriate for the grade levels throughout all the eligible areas. The selection of instruments and the amount of teacher-based information that an LEA uses in the conduct of the assessment is a local determination. This matter will be addressed in more detail in the policy manual.

Changes: None.

Comment: One commenter questioned whether, when an LEA establishes educationally related criteria, which include written or oral testing instruments, the LEA can be required to verify that all those standards identified are below the 50th percentile on a nationally normed achievement test.

Discussion: Educationally deprived children are those whose educational attainment is below the level that is appropriate for children of their age. If there are locally or State-developed measurement instruments that have local or State norms, those norms may be used to identify the educationally deprived children. There is no requirement to verify selection instruments with a nationally normed achievement test.

Changes: None.

Comment: One commenter recommend that LEAs be allowed to use Chapter 1 funds to conduct the annual assessment of educational needs. The commenter supported this position by stating that, after the first year of Chapter 1, LEAs have been pressured by Congressional mandates to operate a continuous federally supported program for educationally deprived students and that it is illegal for an LEA to use public tax revenues to assess educational needs of nonpublic students. Another commenter questioned whether the general provision in § 200.31(a) precludes the LEA from using Chapter 1 funds to conduct the annual assessment of educational needs provision in § 200.31(b).

Discussion: Section 1011(a)(1) of the Act provides that Chapter 1 funds may be used only for programs and projects that are designed to meet the special educational needs of identified educationally deprived children. Accordingly, it is the responsibility of the LEA to identify—through measures already available to it—the educationally deprived children in

eligible areas. The LEA may acquire from nonpublic school officials comparable information that may be used to determine which nonpublic school children are eligible for Chapter 1. Once eligibility has been established, further assessment to determine specific needs of children may be supported with Chapter 1 funds.

Changes: None.

Comment: One commenter questioned if, when following a student who has transferred to a school attendance area or a school not receiving funds under this part, the funding for service at the new school should be taken from funds allotted to the student's original school. Alternatively, the commenter suggested the LEA retain funds prior to allocating monies to each site to provide this service.

Discussion: Section 200.31(c)(1) permits an LEA to continue to provide services to children who transfer to a school not receiving services. The decision is left to the LEA and must be based on available resources and concerns about the size, scope, and quality of the services. Since the services can be provided only during the current school year, rather than allotting funds, the LEA will have to redirect staff and instructional materials and supplies. The specific procedures are best determined by the LEA.

Changes: None.

Comment: One commenter interpreted the requirement to assess the needs of children in all eligible attendance areas to mean only those schools the district intends to serve rather than a requirement to conduct a needs assessment in all eligible schools.

Discussion: Section 1014(b) of the Act requires an LEA to make an assessment of needs in all eligible attendance areas.

Changes: None.

Comment: Several commenters suggested that §§ 200.30(a) and 200.31(b) appear to suggest that a project may be carried out in a lower-ranked school only if that same project has been implemented in a higher-ranked school and that an LEA must implement the same activity at the same grade level throughout the school district. Two commenters recommended that the needs assessment should dictate the project implemented at any school. Two other commenters requested clarification as to whether they had to have the same program activity in all attendance areas or could they have different program areas.

Discussion: In setting out the requirements for project area and student selection in §§ 200.30(a) and 200.31(b), the Secretary did not mean to suggest that the Chapter 1 project must be the same in all locations.

Changes: Section 200.31(b)(2) has been revised to clarify that instructional areas and grade levels to be served may vary among and within school attendance areas if the needs assessment data support differing areas and grades.

Comment: One commenter recommended that, because of the important role pupil services can play in meeting the special needs of participants, § 200.31(b)(6) should be revised to include the need for pupil services.

Discussion: The Secretary believes that it is not necessary to specify pupil services in this section of the regulations, since inclusion of pupil services is included elsewhere. However, the Secretary does wish to make it clear that available personnel and other resources—including pupil services—must be considered in determining how the LEA will meet the special educational needs of the children.

Changes: Section 200.31(b)(6)(ii) has been added to clarify that the LEA must determine the resources it will use to meet the special educational needs of participating children.

Section 200.32 What Are the Size, Scope, and Quality Requirements of a Project?

Comment: One commenter requested that the size, scope, and quality provision specifically state that the determination should be made by the LEA. Alternatively, the commenter suggested the requirement be deleted or that the regulations define the terms: "size, scope, and quality;" "give reasonable promise;" and "substantial progress toward meeting education needs."

Discussion: Section 1012(b) of the Act requires that an LEA's application provide an assurance that the program and projects are of sufficient size, scope, and quality and gives the SEA approval authority for the LEA's application. In exercising its approval authority, the SEA reviews the conformity of the LEA's application to the size, scope, and quality requirements in § 200.32. Interpretations of "reasonable promise" and "substantial progress" are more appropriately made by an SEA in light of the specific conditions in the State and the LEA.

Changes: None.

Section 200.33 How Does an LEA Allocate Resources to Project Areas and Schools?

Comment: Two commenters requested clarification for the term "degree of educational deprivation" as used in § 200.33(a)(2) of the regulations.

Discussion: In requiring LEAs to take into account the degree of educational deprivation of students when allocating Chapter 1 resources to schools, the Secretary recognizes that it takes more resources to bring children far behind their peers up to an educational level that is expected for their age than may be needed for children who are closer to the norm. The Secretary leaves to LEAs the flexibility on how this general principle should be applied.

Changes: None.

Comment: One commenter requested that the regulations provide safeguards to ensure the greatest weight be given to children receiving services for the first time.

Discussion: The Secretary does not believe there is evidence that a student entering the program for the first time is needier than students already in the program. Section 200.33(a)(1) requires LEAs to consider the needs of children in allocating resources to schools. If an LEA finds that first-time entrance into Chapter 1 is a factor influencing the relative need of the student, it may include that factor in its decision on allocation of resources.

Changes: None.

Comment: One commenter expressed concern that it will require an undue amount of paperwork and documentation to support the allocation of the resources, and that funds within the local system should flow based on a well-planned assessment of student needs.

Discussion: Section 200.33 makes clear that resource allocation and needs assessment are highly related. That indeed is the purpose of this provision. The Secretary does not intend, nor does he believe, that the process will be burdensome.

Changes: None.

Comment: One commenter suggested that "allocate resources" be substituted for "allocated funds" because services may be in time, number, or ratio.

Discussion: The Secretary agrees with the suggestion.

Changes: The language of § 200.33 has been revised to reflect this suggestion.

Section 200.34 How Does an LEA Involve Parents?

Comment: One commenter recommended that the planning, design,

and implementation of the Chapter 1 program be left to professionally trained educators.

Discussion: Subsections (b) and (c) of section 1012 of the Act designate the LEA as the agency authorized to apply for funds in an application developed in consultation with teachers and parents. The programs and projects described in the application are to be designed and implemented in consultation with teachers (including early childhood education professionals and librarians when appropriate), and provide for parental involvement in accordance with section 1016 of the Act, which includes, but is not limited to, parent input into the design and implementation of the Chapter 1 program.

Changes: None.

Comment: Two commenters expressed concern that the parent involvement activities listed in the proposed regulations were excessive and would take needed resources from direct student services. One suggested that the regulations follow the legislation and list recommended activities. Another felt that these provisions gave excessive power to parents.

Discussion: Section 1016(c)(1) of the Act requires LEAs to provide reasonable support for parental involvement activities as parents may request. The determination of the amount of funds to be used for this purpose is an LEA responsibility in consultation with parents. The regulations reiterate the activities contained in the statute. While parents are to be consulted, the LEA retains legal authority for all aspects of the Chapter program and must carry out the program in accordance with all statutory and regulatory requirements.

Changes: None.

Comment: One commenter requested that a minimum number be stipulated for the term "regular" in defining the frequency of meetings of parents to formulate program input.

Discussion: The term "regular" is used in the statute. Each LEA is to determine the frequency in consideration of the desires of parents of participating children.

Changes: None.

Comment: One commenter inquired as to the means the annual assessment of effectiveness of parental involvement will be accomplished.

Discussion: Section 1021 of the Act requires each LEA to conduct the annual assessment in consultation with parents. The design and implementation of the assessment, therefore, is the responsibility of the LEA in consultation with parents.

Changes: None.

Comment: One commenter recommended including a Parent Chapter 1 Evaluation Council elected by parents and teachers.

Discussion: The statute contains no authority on which the Secretary could rely to require the information of parent Chapter 1 evaluation councils. LEAs may, in consultation with parents, establish parent advisory councils and determine the manner in which membership is to be selected.

Changes: None.

Comment: One commenter expressed concern that there were insufficient details in the regulations to ensure that parental involvement is effective.

Discussion: Section 1021(a)(4) of the Act and § 200.34(d) of the regulations require each LEA to assess annually, through consultation with parents, the effectiveness of parental involvement and to determine actions, if any, needed to increase parental participation. The Secretary believes these assessment requirements and the specific requirements in § 200.34(c) are sufficient to ensure effective parental involvement.

Changes: None.

Comment: One commenter recommended that training be allowed in conversational usage in languages other than English for teachers and other staff working with limited English proficient students as well as training in English conversational usage for non-English speaking parents.

Discussion: Section 1016 of the Act and § 200.34 of the regulations require the LEA to support training of parents to understand the program, to work with the children, and to ensure opportunities, to the extent practicable, for the full participation of parents whose native language is not English. To accomplish the latter, an LEA may need to provide parents with training in conversational English. Also, to the extent practicable, information, programs, and activities for parents are to be provided in a language and form that parents understand, which may necessitate training of teachers and staff to be able to communicate in the native language(s) of the parents.

Changes: None.

Comment: One commenter recommended adding principals to those to be trained.

Discussion: The statute intends that the LEA is to provide training to all school staff who are involved in the Chapter 1 program, including principals, to work with parents and build a home-school partnership. The Secretary agrees that the school principal is an important member of the school staff and should be included in the list of those to be trained.

Changes: Paragraphs (b) (3) and (4) of § 200.34 have been modified to add "principals" to parents and other staff members to be trained.

Comment: One commenter recommended adding pupil services personnel, specifically social workers, to this section.

Discussion: The statute intends that any education personnel under the Chapter 1 program are to be included among those accessible to parents and that such personnel may receive training and support to work with parents. The Secretary believes that pupil services personnel, including school social workers, are among such education personnel.

Changes: Paragraphs (c)(3)(iii) and (e)(6) of § 200.34 have been modified to add "pupil services personnel."

Comment: Several commenters questioned whether reasonable amounts of Chapter 1 funds could be spent for refreshments and food provided during parent meetings or training sessions.

Discussion: Section 1016(c)(5) of the Act states that LEAs may incur reasonable and necessary expenditures associated with attendance of parents at training sessions. Reasonable expenditure for refreshments or food, particularly when such sessions extend through mealtime, are allowable.

Changes: None.

Comment: One commenter asked if parents can be paid to attend meetings.

Discussion: While the statute authorizes LEAs to incur reasonable and necessary expenditures associated with parental involvement, these expenditures are limited to costs that are related to any expenses the parent may incur to participate, including babysitting and transportation. The LEA is not authorized to pay a parent to attend a meeting or training session or to reimburse a parent for salary lost because the parent misses work to attend meetings, training sessions, or any other Chapter 1 related activity.

Changes: None.

Comment: Two commenters recommended that the regulations clarify that parents are to be involved in the entire Chapter 1 LEA Program, not only the parent involvement section. One commenter further recommended that the general rule in § 200.34(a)(i) include parent input into the evaluation of Chapter 1 projects, and rather than refer to "those programs," the regulations specify that the input is for the "Chapter 1 LEA Program."

Discussion: Section 200.34(a), reiterating the provision in section

1016(a)(3) of the Act, states that parent involvement include, but not be limited to, input into planning, design, and implementation of Chapter 1 projects. The statutory and regulatory language is broad enough to include evaluation activities. The Secretary does not think that added specificity in the regulation is needed. The Secretary agrees, however, with the suggestion the regulations emphasize that the parental involvement is for the Chapter 1 LEA Program.

Changes: Section 200.34(a)(i) has been modified to clarify that parents are to be involved in the Chapter 1 LEA Program.

Comment: One commenter requested clarification of what kind of coordination is intended with programs under the Adult Education Act.

Discussion: The Adult Education Act authorizes programs to improve the literacy skills of adults. To the extent possible, LEA funds available under the Adult Education Act could be used to assist eligible parents of Chapter 1 children to increase proficiency in basic skills in order for them to have the skills for meaningful participation in their children's Chapter 1 program. Chapter 1 funds may be used to increase the level of support available under the Adult Education Act. By working together, these programs can assist the maximum number of parents of Chapter 1 children to be involved in and contribute to the success of the Chapter 1 program.

Changes: None.

Comment: One commenter recommended that one of the goals be expanded to state, "Understand the program and its legal requirements, work with teachers and understand and evaluate curriculum * * *."

Discussion: The goals included in § 200.34(b) reiterate those included in section 1016(b) of the Act. While the Secretary agrees that the activity suggested by the commenter is allowable, he does not believe that additional goals are necessary.

Changes: None.

Comment: One commenter suggested that it be made clear that parental observations should include the requirement that they be conducted under the rules for parental observation of the school district.

Discussion: While § 200.34(c)(3)(iv) of the regulations requires LEAs to permit parents to observe Chapter 1 LEA activities, it is assumed that the LEA has established or will establish procedures to implement this requirement. Nothing in the regulations is intended to contravene duly established LEA procedures regarding parental observation of children's activities.

Change: None.

Comment: One commenter recommended that parents be consulted about plans for program improvement and informed about the results of program evaluation.

Discussion: Section 1021(a) of the Act requires that the LEA make public the results of its annual review of Chapter 1; section 1451(b) of the Act requires that parents be included on the State committee of practitioners to advise the State on its program improvement plan; section 1021(b)(1)(B) of the Act requires that the LEA's program improvement plan be made available to parents of Chapter 1 children; and section 1020(d) of the Act requires that parents be consulted in development and implementation of the SEA–LEA joint plan for program assistance in a school failing to show improvement. The Secretary believes these provisions provide sufficient authority to meet the commenter's goal without additional regulations.

Changes: None.

Comment: One commenter requested clarification of the phrase, "to the extent practicable" to avoid misinterpretation.

Discussion: The inclusion of this phrase in section 1016(b)(6) of the Act recognizes that local conditions may affect the manner of implementation of this provision. The Secretary does not believe that further regulation to define the phrase would be helpful, since local conditions vary widely.

Changes: None.

Comment: One commenter suggested that the regulations clarify that parents of private school children be included in parent involvement activities.

Discussion: Section 1016 of the Act sets out the requirements for involving "parents of participating children" in the Chapter 1 LEA Program. This section does not differentiate between parents of public school children and parents of private school children. The Secretary believes the parent involvement requirements apply to all parents of participating children.

Changes: Section 200.34(a) has been changed to make explicit that an LEA must implement activities for the involvement of parents of participating public and private school children.

Section 200.35 What Are the Requirements for Evaluating and Reporting Project Results?

Comment: One commenter noted that timelines for LEA and SEA evaluations and for submission of information in the performance report differ. The commenter suggested they be made the same.

Discussion: The timelines are prescribed in section 1019 of the Act.

Changes: None.

Comment: Several commenters asked whether the evaluation measures required under § 200.35(a) also apply to the program improvement requirements in § 200.38. Specifically, the commenters questioned whether measures developed pursuant to the national standards in Subpart H had to be used as part of the local review required by § 200.38(a).

Discussion: Consistent with sections 1021 (b)(1) and (f) of the Act, §§ 200.38 (a)(1)(i), (b)(1), and (d)(1) make clear that LEAs must assess both aggregate performance and substantial progress toward meeting desired outcomes in determining which schools and students are in need of program improvement. The Secretary believes that the provisions in sections 1021 (a)(3) and (b)(1) of the Act, which tie the results of evaluations under section 1019 to program improvement efforts, require an LEA to use the measures used under § 200.35(a) to assess both aggregate and individual performance under § 200.38. Other measures, determined by the LEA, may be used to assess progress toward desired outcomes.

Changes: None.

Comment: One commenter suggested adding in § 200.35(a) suggested methods to measure progress toward meeting desired outcomes.

Discussion: The Secretary agrees that further guidance on desired outcomes is needed. Rather than including this guidance in § 200.35(a), however, he has added a definition of desired outcomes in § 200.6(c).

Changes: A definition of desired outcomes has been added in § 200.6(c). As that definition indicates, desired outcomes may be expressed in terms of indicators such as improved aggregate performance, improved student performance measured by criterion-referenced tests, lower dropout rates, improved attendance, and fewer retentions in grade.

Comment: One commenter suggested that the requirement for determining sustained gains be limited to children attending schools participating in the Chapter 1 program, rather than children who received Chapter 1 services last year but are currently enrolled in a non-Chapter 1 school in the LEA, as required under § 200.35(a)(2)(ii).

Discussion: The purpose of the sustained gains requirement is to determine if the positive effects of Chapter 1 remain over time. It is important for LEAs to know if, as a child moves from a participating school to a school not in the Chapter 1 program, the gains made in Chapter 1 continue.

Changes: None.

Comment: Several commenters requested that the regulations clarify that the provision in § 200.35(a)(1)(i)(B) excluding preschool, kindergarten, and first grade children from the requirement for reporting student achievement data does not remove the requirement that the effectiveness of the Chapter 1 program on these children be assessed.

Discussion: The Secretary concurs that LEAs are required to assess the effectiveness of the Chapter 1 LEA Program on all children served, including those in preschool, kindergarten, and first grade. The exclusion in § 200.35(a)(1)(i)(B) from reporting aggregate achievement data, contained in section 1019(c) of the Act, recognizes the paucity of valid aggregatable measures for children in these age groups. However, section 1021(a) of the Act, requiring LEAs to annually review the effectiveness of their Chapter 1 programs, contains no such exclusion. The regulations, as written, apply the exclusion only to the aggregate achievement requirement in § 200.35(a)(1)(i)(B), and not to other requirements contained in this section or other sections of the regulations.

Changes: None.

Comment: Several commenters expressed concern about the requirements in §§ 200.35(a)(2) and 200.38(a)(2) regarding the determination of whether improved performance is sustained over a period of more than 12 months. Commenters noted that the Conference Report accompanying the Act states that LEAs may implement this requirement through use of a "sampling procedure or carefully designed study * * * rather than trying to track all children served at all grade levels in all subject areas * * *," and that this language was not included in the regulations. Another commenter questioned the necessity of measuring sustained gains, since LEAs are not required to report results to the SEA. Still another commenter noted the cost involved in determining sustained effects. Additional commenters noted the difficulty and expense in following children over a two-year period—particularly with mobile populations and for students no longer in the Chapter 1 LEA Program.

Discussion: The provisions in §§ 200.35(a)(2) and 200.38(a)(2) reiterate provisions in sections 1019(a)(3) and 1021(a)(2) of the Act, respectively. The determination by an LEA of sustained gains is for its use in both measuring the effectiveness of its programs and making modifications to increase the impact of Chapter 1. The manner in which sustained gains may be measured is not specified in the regulations. The Secretary concurs that carefully designed studies and sampling procedures are appropriate. Chapter 1 TACs and available to provide help to LEAs in determining ways to measure sustained gains. The Secretary is aware that including children no longer in the Chapter 1 LEA Program takes extra effort and resources. However, in order to assess the impact of Chapter 1, it is necessary to determine how well students perform after they exit the program.

Changes: None.

Comment: One commenter indicated that the commenter's State planned to change the State testing program during the 1989–90 school year. Because the test used in 1988–89 would differ from that used in 1989–90, the State would be unable to provide any results for that annual cycle. The State requested that it be allowed to defer reporting results until the 1990–91 school year.

Discussion: The Secretary appreciates the particular problems an annual test cycle poses to LEAs and SEAs changing testing programs from one year to the next. This problem occurs not only in relation to reporting results but, more importantly, in determining in which schools there was no improvement or a decline in aggregate performance—an indicator of the need for program improvement. However, the Secretary has no authority to waive the evaluation and reporting requirements in section 1019(a) and (b) of the Act, or the LEA annual review requirements in section 1021(a). It should be noted, however, that the State evaluation and reporting provision, which requires the SEA to conduct evaluations and report results to the Secretary, must be done at least once every two years. This would allow States wishing to change test plans to do so in the off year. Alternatively, SEAs may wish to equate results of the two tests to determine gains, or post-test an adequate sample of children in each grade on the initial test to provide statewide results.

In relation to the annual review, LEAs may measure performance gains through equating or other means, or apply the local condition contained in section 1021(e)(5) of the Act.

Changes: None.

Comment: Several commenters objected to the provision in § 200.35(b)(4) of the proposed regulations that SEAs may require LEAs to evaluate the effect of Chapter 1 projects on children's achievement in the regular program, including writing, science, history, or other subjects. The commenters stated that this procedure could be unduly burdensome, questioned the legislative support for such and SEA authority, and stated that the Chapter 1 program should be evaluated only in terms of the subject areas of Chapter 1 instruction. On the other hand, one commenter, noting that section 1001(b) of the Act gives as its purpose "helping such children succeed in the regular program of the local educational agency," objected to the use of the permissive "may require" in the regulations. This commenter stated that evaluation of Chapter 1 children's success in the regular program was an implicit requirement of the Act.

Discussion: The Secretary is sensitive to the concern of burden raised by many commenters and wishes to make clear that the provision was not intended to encourage extensive additional testing of Chapter 1 children. Rather, the provision was intended to capture the added emphasis in the purpose of the Act quoted above. In addition, the Secretary is concerned that gains Chapter 1 children may make, as measured by standardized tests in basic skills, may not always translate into improved performance in the regular school program or, conversely, children's progress in the regular school program may not be reflected in the scores they receive on standardized tests. Upon reconsideration, the Secretary continues to believe that assessment of a child's progress in the regular program is necessary to determine if the purpose of the program is being achieved. However, the Secretary will leave the determination of how to conduct that assessment to State and local officials.

Changes: The provision in § 200.35(b)(4) has been removed, and a new provision has been added in § 200.35(a)(1(ii). This provision requires an LEA to include in its evaluation a review of chapter 1 children's progress in the regular program. The review may be based on teacher judgments, grades, retention rates, and other appropriate indicators of success.

Comment: One commenter objected to the requirement in § 200.35(c) that SEAs must annually collect the data specified in section 1019 of the Act. The commenter noted that section 1019 does not require LEAs to submit evaluation information to SEAs every year. Moreover, SEAs are required to submit aggregate data based on local evaluations only once every two years.

Discussion: Section 200.35(c) implements the requirement in section 1019(b)(3) of the Act that requires an SEA to submit annually specific demographic data concerning children participating in Chapter 1 programs in the State. Section 200.35(c) is not

intended to require an SEA to submit evaluation information each year. However, some SEAs choose to do so annually. Likewise, rather than collecting data from all LEAs every two years, other SEAs collect samples of data each year. Under § 200.35(c), SEAs may, and are encouraged to, submit evaluation data as they receive them.

Changes: None.

Comment: A number of comments were received regarding the items listed in the preamble of the proposed regulations that the Secretary plans to collect in the annual performance report under § 200.35(c). Several commenters expressed support for the data collection, particularly information regarding services to children attending private schools and data on numbers of children eligible for Chapter 1 services. Some commenters, however, objected to collecting information on the number of eligible Chapter 1 children, citing increased burden; others asked that the term "eligible children" be defined to facilitate better data collection. Another commenter asked that the term "supportive services" be defined to include school social work and school psychological services. Other commenters noted that the proposed contents of the performance report exceed the requirements in section 1019(b)(3) of the Act. Still others remarked that the provision in § 200.35(c)(2) that an LEA provide to the SEA "any data needed by the SEA to complete its annual performance report" was not needed, since the needed information was included in the statute and regulations.

Discussion: The Secretary is aware that collection of information on the number of eligible children in public and private schools may entail some increased burden on LEAs. However, he believes the information is needed for two major purposes. First, section 1001(a)(2)(B) of the Act declares it to be the intent of Congress that funding for the program be increased annually with a goal of "serving all eligible children by fiscal year 1993 * * *." In the past, the number of eligible children has not been reported, and estimates of the number have varied rather widely. In order to provide Congress and the Department with information necessary to meet the intent of section 1001(a)(2)(B), the Secretary believes a more accurate means to determine the number of eligible children is necessary. Second, concern has been expressed by representatives of private school children that the percentage of eligible private school children being served is lower than the percentage of public school children being served. Collection of this information will allow LEAs, SEAs, and the Department to address this concern.

In regard to burden, the Secretary calls attention to section 1014(b) of the Act, which requires LEAs to "identify educationally deprived children in all eligible attendance areas." Since these are the precise data that will be collected, the additional burden related to reporting them should be minimal. The Secretary will specify, on the form used to collect the data, the meaning of the terms "eligible children" and "supportive services." "Supportive services" includes school social work and school psychological services.

Regarding the comment that § 200.35(c)(2) is not needed because the information to be reported is included in the Act, the Secretary notes that not all the information he intends to collect is specifically included in section 1019(b)(3) of the Act. The authority to collect this additional information is contained in section 406A of the General Education Provisions Act.

Changes: None.

Section 200.36 What Are the Requirements for Schoolwide Projects?

Comment: One commenter, noting that the option for allocation of funds to schoolwide projects contained in § 200.36(c)(1)(i)(B) would provide more Chapter 1 funds to the school than it would otherwise receive, suggested its elimination, and recommended that the funding per child in a schoolwide project be no greater than the amount per child served in the other project schools in the LEA. Another commenter requested that the regulations be revised to require that allocations to schoolwide projects be determined by the number of educationally deprived children served to be consistent with allocations to other Chapter 1 schools, and that a definition of "served" be included. Still another commenter claimed that the regulations would allow a vast reduction—perhaps by 50 percent or more—in Chapter 1 funding for schoolwide projects by use of the method in § 200.36(c)(1)(i)(A).

Discussion: The negotiated rulemaking group agreed on the two methods in the proposed regulations for determining the number of educationally deprived children in a schoolwide project: Either (1) the number of children in the schoolwide project below the highest ranked child served in other project schools in the LEA; or (2) all children meeting the definition in § 200.6(c) of "educationally deprived children." The Secretary believes that LEAs need the flexibility of the options for allocating resources between schoolwide projects and other project schools. Although an LEA may choose to count educationally deprived children in a schoolwide project on the same basis as it selects participants in other project schools and, therefore, provide fewer resources for the schoolwide project than it would if it counted all educationally deprived children, the proposed project must still be of sufficient size, scope, and quality to give reasonable promise of success. Moreover, this option was requested by LEAs and SEAs that were concerned that resources would be directed away from other project schools if LEAs were required to fund schoolwide projects on the basis of all educationally deprived children. Lastly, since a schoolwide project must meet the needs of all children in the school, including all educationally deprived children, the Secretary does not believe that a definition of "served" is necessary.

Changes: None.

Comment: One commenter requested that allowable costs for schoolwide projects be focused on educational activities rather than being spent in other ways not specifically directed at improving the education of children.

Discussion: Subsections (a) and (d) of section 1015 of the Act make clear that allowable costs must be focused on educational activities. The purpose of schoolwide projects, as specified in section 1015, is to make it possible for an LEA to carry out a project to upgrade the entire educational program in an eligible school.

Changes: None.

Comment: One commenter questioned if it was allowable to commingle State and local funds for meeting the per pupil expenditure requirement in § 200.36(c)(2).

Discussion: Section 200.36(c)(2) requires that the LEA spend per child at least the same amount of State and local funds in a schoolwide project as it spent in the preceding year. The amount is an aggregate amount rather than by each funding source.

Changes: None.

Comment: One commenter questioned whether an LEA would have to allocate additional funds to schoolwide projects from sources other than Chapter 1 in order to have sufficient size, scope, and quality. The commenter was concerned about the impact such an allocation would have on other schools in the LEA.

Discussion: As a result of the negotiated rulemaking process, consensus was reached on retaining the regulatory requirement that LEAs provide sufficient funds for a

schoolwide project to ensure that the project is of sufficient size, scope, and quality to give reasonable promise of success. Normally, this requirement would be met with Chapter 1 funds. However, if Chapter 1 funds are insufficient to meet this requirement, additional funds, which could come from other Federal funds or State or local funds, would need to be used. The decision is that of the LEA.

Changes: None.

Comment: One commenter was concerned that section 1015 of the Act appears to put a dollar figure on expenditures each year and questioned if it would be possible to spend more in the first year and less in the second and third years, then average total expenditures for the three-year period. The commenter noted that, in some circumstances, start-up costs for schoolwide projects could be higher than costs in subsequent years.

Discussion: Chapter 1 funding for schoolwide projects is based on the number of educationally deprived children in the school as determined by the LEA using one of the two options specified in § 200.36(c)(1)(i) of the regulations. Since section 1015(b)(6)(A) of the Act requires that Chapter 1 funds in a schoolwide project equal or exceed the amount per child made available in other project schools, the Secretary interprets the Act to require that expenditures be reviewed annually.

Changes: None.

Comment: One commenter recommended that LEAs be allowed to apply for money to conduct schoolwide projects based on a proposal that would meet the same goals but cost less money than following the regulations.

Discussion: Section 1015(b)(6)(A) of the Act specifies that LEAs must make available for schoolwide projects Chapter 1 funds that per educationally deprived child in the schoolwide project equal or exceed the amount expended per child served in Chapter 1 projects in the LEA's other schools. The Secretary believes that § 200.36(c)(1)(i) of the regulations, which was agreed to during negotiated rulemaking, provides the maximum flexibility allowed by the statute.

Changes: None.

Comment: One commenter asked how achievement data are to be used when demonstrating program improvement.

Discussion: Section 200.36(f)(4) of the regulations implements section 1015(e)(3) of the Act which requires that LEAs shall annually collect achievement and other assessment data for each school participating in a schoolwide project. Section 200.36(f)(5) of the regulations provides that the program improvement requirements in §§ 200.37–200.38 apply to schoolwide projects. Therefore, if a school implementing a schoolwide project does not show substantial progress toward meeting the desired outcomes described in the LEA's application or shows no improvement or a decline in aggregate performance, the LEA shall implement the requirements for school program improvement in § 200.38(b)(2).

Changes: None.

Comment: One commenter requested clarification on how evaluation data would be collected and used in determining whether a schoolwide project could be continued beyond the original three-year period. The commenter did not think the proposed regulations were sufficiently clear.

Discussion: Section 200.36(f) of the regulations requires an LEA to collect achievement and other assessment data annually for each school participating in a schoolwide project. In order for a school to continue as a schoolwide project, the LEA must demonstrate that after three years the achievement gains of educationally deprived children in the schoolwide project exceed the average gains of comparable participating children in the LEA as a whole, or comparable educationally deprived children in the same school for the three years prior to the implementation of the schoolwide project. The Secretary does not believe additional clarification is necessary.

Changes: None.

Comment: One commenter, though highly supportive of the regulations, recommended that, to provide additional local flexibility, the size, scope, and quality requirement and program improvement provisions be deleted. The commenter also requested that the regulations provide additional specifications for accountability to provide LEAs with more guidance on this requirement.

Discussion: Section 1015(c) of the Act relieves the LEA from complying with certain requirements of this part. However, the Act does not exempt schoolwide projects from the size, scope, and quality requirements in section 1012(c) of the program improvement requirements in section 1021. The Secretary believes the accountability requirements in § 200.36(f) of the regulations, which generally reflect section 1015(e) of the Act, and §§ 200.37–200.38 related to program improvement provide sufficient guidance. The addition of more specific requirements might unduly restrict State and local agencies.

Changes: None.

Comment: A number of commenters requested deletion of the requirement applying the program improvement provisions to schoolwide projects, and argued that it was confusing, duplicative, and fails to recognize the differences that Congress intended for this type of project.

Discussion: Section 1021(b) of the Act requires LEAs to implement program improvement activities in "each school which does not show substantial progress toward meeting the desired outcomes * * * or shows no improvement or a decline in aggregate performance of children served under this chapter * * *." This provision applies to all schools served by Chapter 1—whether or not the schoolwide project approach is used. In addition, the applicability of the program improvement requirements to schoolwide projects was agreed to by all participants in the negotiated rulemaking process.

Changes: None.

Comment: One commenter questioned what would happen with the large amount of money spent for a schoolwide project after three years if, even with SEA assistance for school improvement, improvement did not occur.

Discussion: Unless the LEA fails to comply with the requirements under this part or incurs unallowable expenditures, there would be no basis for determining that the funds spent for an unsuccessful schoolwide project be disallowed. Therefore, an LEA would not be required to repay to the SEA the amount expended for a schoolwide project over the three-year period.

Changes: None.

Comment: One commenter questioned when it would be inappropriate for an LEA to move to implement an effective schools program as stated in section 1015(b)(1)(E) of the Act.

Discussion: Section 1015(b) of the Act requires that a plan be developed for each school implementing a schoolwide project. The plan must include, if appropriate, a description of "how the school will move to implement an effective schools program as defined in section 1471" of the Act. The definition of "effective schools program" contains very specific components. If an LEA wishes to implement an effective schools program in a schoolwide project school, it should include in its plan how it would do so. However, an LEA may decide to address the needs of the children in the schoolwide project through other approaches.

Changes: None.

Comment: One commenter questioned whether the writing of a schoolwide

project plan could be considered the first year of the project.

Discussion: The SEA, if it finds that the plan meets the requirement of the Act, shall approve the plan for a period of three years. This period begins with implementation of the plan and does not include time devoted to planning prior to establishment of the schoolwide project.

Changes: None.

Comment: One commenter questioned if a single SEA/LEA could operate a schoolwide project, since the Act refers only to LEAs

Discussion: This comment refers to agencies that are both a State educational agency and a local educational agency, e.g., Puerto Rico, the District of Columbia, and Hawaii. Such agencies may operate a schoolwide project.

Changes: None.

Comment: One commenter questioned what grades could be served under a schoolwide project if a plan covers a specific grade span within a school. The commenter apparently believes that a schoolwide project may be limited to certain grades within the school.

Discussion: Section 1015(a) of the Act gives as the purpose of a schoolwide project to upgrade the entire educational program in an eligible school. A plan, therefore, could not restrict the project to only some of the grades in the school.

Changes: None.

Comment: One commenter requested that the regulations allow any school where all students receive free lunches to qualify automatically to be a schoolwide Chapter 1 project so that a district that collects this income information every three years would not have to collect it annually for schoolwide project schools.

Discussion: Section 2001.36(a)(2) of the regulations specifies that an LEA may conduct a Chapter 1 schoolwide project if, for the first year of the three-year project, the LEA determines, using the same measures of low-income used to identify and rank school attendance areas under § 200.30(c), that at least 75 percent of the children residing in the school attendance area or enrolled in the school are from low-income families. If eligibility for free school lunches is used to identify and rank school attendance areas under § 200.30(c), the LEA must provide such data for the first project year for a school conducting a schoolwide project, and is not required to make the determination of eligibility again during the three-year period.

Changes: None.

Comment: Commenters requested an addition to clarify that LEAs need not seek written permission from all parents in a schoolwide project school for their children to participate in project activities. The commenters were concerned with the burden involved in collecting these permissions.

Discussion: Section 1015(b)(2)–(3) of the Act requires that parents be involved in the development of the plan, that they be consulted regarding the educational progress of all students, and that they participate in the development and implementation of accountability measures. There is no requirement that written permission be obtained from parents for their children to participate in project activities, either in the Act or the regulations.

Changes: None.

Comment: One commenter requested that the regulations contain requirements for frequent monitoring of schoolwide projects to be conducted by the SEA and the LEA to ensure that funds and services are not being diverted from the most needy students to those whose needs are less.

Discussion: Schoolwide projects use Chapter 1 funds in attendance areas with very high concentrations of poor children to improve the instructional program in the entire school. These activities will, by definition, benefit all children in these schools. However, section 1015(b)(1)(A)–(B) requires that an LEA's schoolwide project plan assess "in particular the special needs of educationally deprived children" and "ensure that educationally deprived children are served effectively and demonstrate performance gains comparable to other students." Moreover, the accountability measures in section 1015(e) of the Act require the LEA to examine the progress of educationally deprived children. Thus, the LEA must ensure that the needs of educationally deprived children are met, even in a schoolwide project.

Changes: None.

Comment: One commenter felt the provisions discussing supplement, not supplant requirements in these regulations were ambiguous or contradictory.

Discussion: The supplement, not supplant requirements in § 200.36 are not contradictory. Section 200.36(c)(3) requires that an LEA make all non-Federal funds available to a schoolwide project school that the LEA would have made available were there no Chapter 1 project in that school. In other words, the Chapter 1 funds must be supplemental to non-Federal funds the school would otherwise receive. However, since schoolwide projects upgrade the instructional program of the entire school, § 200.36(d)(2)(iii) of the regulations relieves the LEA from demonstrating that services paid for with Chapter 1 funds supplement services regularly provided in the school. In other words Chapter 1 funds may be used to provide regular instructional services.

Changes: None.

Comment: Commenters requested a clarification of the term "commingling" as it is used in § 200.36(d) of the proposed regulations. Commenters were concerned that the provision would allow funds received under this part to be combined with other funds in a way that would cause grant funds to lose identity.

Discussion: In accordance with section 1015(c)(2)(A) of the Act, the proposed regulations provided that, for each school that has a schoolwide project plan approved by the SEA, and LEA does not have to comply with any Chapter 1 requirements prohibiting the commingling of funds available under this part with State and local funds. The Secretary interprets the provision to mean that the LEA does not have to demonstrate that Chapter 1 funds benefit only educationally deprived children. The Secretary does not interpret the commingling provision in section 1015(c)(2)(A) to excuse an LEA from documenting separately that Chapter 1 funds have, in fact, been spent in a schoolwide project. The LEA must keep records to document the expenditure of Chapter 1 funds in a schoolwide project in order to determine compliance with the restrictions on carryover funds under § 200.46 and that the funds are spent within the period of availability provided under section 412(b) of GEPA.

Changes: Section 236(d)(2)(i) of the regulations has been revised to clarify the term "commingling." In addition, § 200.36(c)(5) has been added to the regulations to clarify the LEAs must keep records to document expenditure of funds under this part in a schoolwide project.

Comment: None.

Discussion: Internal review by the Department revealed that the accountability requirements for schoolwide projects contained in § 200.36(f)(1) (i) and (ii) could be misunderstood. Specifically the provisions referred to a comparison of the "achievement level" of educationally deprived children in the schoolwide project to that of similar Chapter 1 children in other schools in the LEA or with children who attended the school in the three years prior to the institution of the schoolwide project. Use of the term "achievement level" could be interpreted to mean a comparison of average scores of the two groups, when

the intention is to compare the relative gains made by each group.

Changes: Paragraphs (f)(1) (i) and (ii) of § 200.36 of the regulations have been modified to make clear that the basis for comparisons are gains in achievement.

Section 200.37 What Are an SEA's Responsibilities for Program Improvement?

Comment: Numerous commenters expressed concern that the activities listed in § 200.37(a)(iv) through which an SEA may provide program improvement assistance to LEAs are, for the most part, activities carried out by LEAs, not SEAs. The commenters suggested, therefore, that the final regulations add different modifiers such as "identifying and helping LEAs adapt" curricula that have shown promise in similar schools rather than "developing" such curricula. Other commenters recommended that the program improvement activities be shared, noting that the regulations have a tone of SEA dominance. Two commenters expressed concern that the program improvement activities place too much responsibility on SEAs and remove the major responsibility from LEAs, where they believe it belongs.

Discussion: The activities listed in § 200.37(a)(2)(iv) of the proposed regulations are contained in section 1020(a)(2) of the Act. In implementing that section, the Secretary did not intend to suggest that SEAs must take over traditional LEA responsibilities. Rather, the Secretary believes that section 1020(a)(2) intends that SEAs and LEAs work cooperatively in program improvement efforts. In the end, those efforts must be carried out at the local level, and nothing in section 1020 or section 1021 relieves an LEA of that responsibility. However, those sections recognize the SEAs can provide invaluable assistance, such as identifying curricula that have shown promise in similar schools, helping to train and retrain staff, and identifying successful programs to replicate and assisting LEAs in that replication. In turn, that assistance may enable LEAs to improve their Chapter 1 programs in the project schools, thereby achieving the ultimate goal of Chapter 1—to meet the special educational needs of educationally deprived children.

Changes: The language preceding the list of program assistance activities in § 200.37(a)(2)(iv) has been revised to more accurately reflect that in the statute.

Comment: One commenter questioned what constitutes "in consultation with" the committee of practitioners, parents, and school staff.

Discussion: Consultation is a term that may have different meanings depending upon the context in which it occurs and the matter under consideration. In general, consultation should be organized, systematic, ongoing, informed, and timely in relation to the decisions to be made. Consultation implies a cooperative effort through which an SEA or LEA genuinely solicits the ideas and recommendations of others—be they the committee of practitioners, school staff, or parents—before decisions are made. It does not necessarily mean, however, approval by those persons.

Changes: None.

Comment: Several commenters recommended that under § 200.37(b)(2), an LEA should be able to apply to the SEA for program improvement funds appropriated under section 1405 as soon as the LEA identifies a school in need of assistance. Other commenters asked whether these funds could be used for LEA plans under § 200.38(b)(2)–(5) or whether they were only for joint SEA/LEA plans under § 200.38(b)(6).

Discussion: Section 1021(c) of the Act authorizes an LEA to apply to the SEA for program improvement assistance funds appropriated under section 1405. Section 1405(b)(2) of the Act states that those funds may only be used for direct educational services in schools implementing program improvement plans under section 1021. It does not limit the use of funds to joint SEA/LEA plans. However, section 1405(b)(3) requires that parents of participating children, school staff, the LEA, and the SEA must jointly agree to the selection of providers of technical assistance and the best use of the funds. Thus, nothing precludes an LEA from applying for program improvement funds as soon as the LEA identifies a school in need of assistance. However, the LEA must reach the requisite agreement as to how those funds will be used.

Changes: None.

Comment: Several comments were received regarding the provision in § 200.37(a)(2)(i) permitting an SEA to establish minimum standards to be included in the SEA's program improvement plan. Some commenters supported the provision. Other commenters suggested the provision be deleted, giving the following reasons to support their positions. Some commenters argued that an SEA's minimum standards would tend to automatically become the LEA's standards, discouraging LEAs from setting higher standards they might otherwise establish. One commenter questioned the legislative authority for State standards, contending that this was an LEA function. Another commenter noted that LEAs would establish their own minimum standards in setting desired outcomes. Another commenter requested clarification of the meaning of the word "standards." The commenter noted that section 1020(a)(1) of the Act uses the phrase "objective measures and standards" to mean a method of measurement, whereas the term "minimum standards" in the regulations appears to refer to an acceptable level of performance. Finally, one commenter expressed concern that children failing to meet the standard would be eliminated from the program and that failure to these students to meet standards will lower average achievement for the district. This commenter further expressed concern that LEAs, in setting standards, should take into account the difficulty certain students might encounter in meeting them.

Discussion: By including the work "minimum" as a modifier to possible SEA standards, the Secretary did not mean to imply that these standards should be the only standards to apply to all LEAs or all schools. Rather, the intention was to allow SEAs to set a floor, with the clear implication that, to the extent appropriate, LEAs could and should establish higher levels of expected performance, and that SEAs, in reviewing LEA applications, would ensure that this had been done. However, because of the apparent confusion caused by the use of the term, it has been deleted from the final regulations.

With regard to legislative authority for SEAs to set standards, the Secretary believes it is implicit in the requirement in section 1020(a) of the Act that the State have a program improvement plan; that it is in the section 1012(b) of the Act, which requires an SEA to approve LEA applications, which must include the LEA's desired outcomes; and that it is in the general authority in section 1451(a) of the Act for States to issue regulations.

The Secretary concurs with the commenter's remarks regarding the use of the term "standards" in the Act and the regulations. As used in § 200.37(a)(2)(i), the term means a level of acceptable performance.

Finally, the standard is not to be used to deny services to children who fail to meet it; rather, failure to meet the standard would, under the program improvement requirements, result in modification of the way in which children are served. The commenter is correct that scores of students failing to meet the standard will lower aggregate

achievement scores. This is true whether or not a standard is set. With regard to the commenter's concern that some children might encounter difficulty in meeting a preset standard, the Secretary believes the purpose of Chapter 1 is to enable Chapter 1 children to achieve at a level commensurate with their peers, and that in designing projects and allocating resources, LEAs should take into account the special difficulties some children may have.

Changes: The word "minimum" has been deleted from § 200.37(a)(2)(i) of the regulations.

Section 200.38 What Are an LEA's Responsibilities for Program Improvement?

Comment: Several commenters, noting that the term "aggregate performance" might be interpreted in different ways, requested that its meaning be clarified.

Discussion: Under section 1021(b)(1) of the Act, an LEA must identify any school that "shows no improvement or a decline in "aggregate performance" of children served" under Chapter 1 as needing program improvement. The Secretary concurs that a clarification of the term "aggregate performance" would be helpful. In addition, the Secretary believes it would be helpful to define the circumstances under which no improvement or a decline in aggregate performance will trigger program improvement when aggregate performance in one instructional area shows gain, performance in another instructional area declines.

Changes: A definition of "aggregate performance" has been added to § 200.6(c). In addition, § 200.38(b)(1)(ii) has been added to clarify that, at a minimum, an LEA is required to use the aggregate performance of only the instructional area that is the primary focus of the Chapter 1 program to determine if program improvement activities are required, unless the project addresses two or more instructional areas with relatively equal emphasis. Further, because aggregate performance, as defined in § 200.6(c), must be measured in accordance with the national standards in Subpart H, the references to section 1019 of the Act in §§ 200.37(a)(2)(i) and 200.38(b)(1)(ii)(A) have been deleted.

Comment: One commenter suggested that the regulations clarify that an LEA may select as its desired outcomes the same objectives as identified to assess aggregate performance. Another commenter expressed concern that the need for program improvement not be based solely on one test score and suggested that there be other determining factors.

Discussion: Under section 1012(b) of the Act, an LEA must include desired outcomes in its application. These desired outcomes may be expressed in terms of such indicators as lower dropout rates, improved student performance measured by criterion-referenced tests, improved attendance, fewer retentions in grade, and improved aggregate performance. At a minimum, an LEA's desired outcomes must be expressed in terms of aggregate performance in accordance with § 200.38(b)(1)(ii). Thus, subject to any overall standard established in the State's plan, the LEA may use the standards for aggregate performance in section 1021(b) of the Act as its desired outcomes. In addition, the LEA is encouraged to establish desired outcomes that exceed the minimum in section 1021(b) or that are measured by other indicators such as those described above in order to achieve a more complete picture of the success of the Chapter 1 program.

Changes: A definition of "desired outcomes" has been added to § 200.6(c), which indicates that these outcomes may be expressed in terms of aggregate performance as well as other measures.

Comment: One commenter asked whether desired outcomes had to be written in numerical terms.

Discussion: Desired outcomes must be expressed in terms that can be measured. However, they do not have to be expressed in terms of norm-referenced tests, unless the only desired outcomes an LEA establishes are those relating to aggregate performance.

Changes: None.

Comment: One commenter opposed the requirement in § 200.38(a)(1)(i) that an LEA conduct an annual review of project effectiveness because it exceeds the statutory requirement that project evaluations be conducted every three years.

Discussion: Section 1021(a) of the Act requires each LEA to "conduct an annual review of the program's effectiveness in improving student performance." Section 200.38(a)(1)(i) of the final regulations merely implements this statutory requirement. Certainly, the information gathered pursuant to the annual review requirement may be used by the LEA in fulfilling its three-year evaluation requirement under section 1019(a) of the Act.

Changes: None.

Comment: One commenter asked if an LEA must look at data in the regular program to assess progress in mathematics, reading, and other instructional areas.

Discussion: While there is no specific requirement that an LEA look at data in the regular program in conducting its annual review under section 1021(a) of the Act, section 1001(b) of the Act makes clear that helping participating children succeed in the regular program is a purpose of Chapter 1. Therefore, consistent with this purpose, an LEA may establish as one of its desired outcomes that students demonstrate progress in the regular program. In that case, the LEA would need to look at data from the regular program in conducting the annual review. In addition, § 200.35(a)(2)(ii) of the final regulations requires an LEA to include in its evaluation under section 1019(a) of the Act a review of Chapter 1 children's progress in the regular program.

Changes: None.

Comment: One commenter suggested that aggregated data should be collected for at least two years because data from only one year may produce invalid results in small schools with fewer than 25 children.

Discussion: Section 1021(a)(1) of the Act requires that an LEA conduct an *annual* review. Thus, there is no authority for an LEA to collect data over a two-year period. However, the LEA may take into consideration the standard error of measurement, which is greater when small numbers of children are evaluated.

Changes: None.

Comment: Several commenters recommended that the results of the annual review under § 200.38(a)(1) be made available to private school officials, in order that they have needed information about the effectiveness of the project.

Discussion: Section 1021(a)(1) of the Act requires that an LEA "make the results [of the annual review] available to teachers, parents of participating children, and other appropriate parties." Clearly, private school officials who have children participating in the Chapter 1 LEA Program are "other appropriate parties" as identified in section 1021(a)(1). Therefore, an LEA must make the annual review results available to them. "Other appropriate parties" would also include public school officials such as principals of schools with Chapter 1 projects.

Changes: Section 200.38(a)(1)(ii) has been revised to make clear that "other appropriate parties" to which an LEA must make available the results of its annual review includes principals of schools (both public and private) attended by Chapter 1 children.

Comment: One commenter questioned whether a sustained effects study must be done annually under § 200.38(a)(2) and whether this study is in addition to

the sustained effects study an LEA must conduct once every three years under § 200.35(a)(2).

Discussion: Section 1019(a)(3) of the Act requires that an LEA, at least once every three years, determine whether the improved performance of participating children is sustained over a period of more than one program year. Section 1021(a)(2) of the Act requires that, as part of the local review for program improvement, the LEA annually determine whether improved student performance is sustained over a period of more than one program year. As a result of the commenter's question and upon further review, the Secretary interprets section 1021(a)(2) of the Act as referring to improved performance of any schools implementing a program improvement plan under § 200.38(b)(2)–(5) or a joint plan under § 200.38(b)(6). That is, the LEA must annually review the peformance of schools implementing improvement plans until improved performance is sustained over a period of more than 12 months.

Changes: Section 200.38(a)(2) has been revised to clarify that the determination refers to the requirement in § 200.38(b)(6)(iv)(C).

Comment: One commenter questioned how sustained gains under § 200.38(a)(2) can be measured when many children leave a school during the school year.

Discussion: As discussed above, the Secretary interprets the "substained gains" requirement in § 200.38(a)(2) to refer to determinations of whether improved performance of schools undergoing school program improvement is sustained for more than 12 months, as required under section 1021(h) of the Act. However, § 200.35(a)(2) requires an LEA to measure sustained gains of individual children. Under the requirement, the LEA is not required to measure sustained gains for children who transfer to schools outside the LEA during the school year. However, the LEA can and must track children who transfer to other schools within the LEA and measure whether their gains have been sustained.

Changes: None.

Comment: One commenter questioned what triggers program inprovement under § 200.38(b)(1). For example, the commenter noted the aggregating performance for a school may combine multiple projects and hide an unsuccessful component in the gains of successful components. On the other hand, measuring the success of each project in a school could lead to identification of a school as deficient in one area when, on the whole, it is successful.

Discussion: Section 1021(b)(1) of the Act refers to school program improvement and makes clear that, for this requirement, aggregate performance for Chapter 1 students in the school shall be one measure used to select schools for program improvement activities. Therefore, LEAs must aggregate student scores, by instructional area, for the entire school and use that aggregate score as one measure to determine if program improvement efforts are required. It two or more instructional areas are included in the project at the school, results for each instructional area must be aggregated separately, and the principle contained in § 200.38(b)(1)(ii) applied to determine if program improvement is required.

The Secretary agrees that use of aggregate data may mask poor performance at centain grades, or for some students, but notes that section 1021(f) of the Act and § 200.38(d) of the regulations, related to student program improvement, require LEAs to take steps to ensure that, within schools with overall achievement gains, the needs of students who are not progressing will be addressed.

Changes: Definition of "aggregate performance" and "desired outcomes" has been added in § 200.6(c). In addition, § 200.38(b)(1)(ii) has been revised to conform to the new definitions and to clarify how aggregate performance is to be determined.

Comment: One commenter stated the § 200.38(b)(1)(ii) sets a standard of zero normal curve equivalent (NCE) point gain as the aggregate performance basis to determine if a school is in need of program improvement, since the regulation defines a school to be selected as one that shows no improvement or a decline in aggregate performance. The commenter suggested that this provision contradicts § 200.37(a)(2)(i), which gives an SEA authority to establish standards that may be higher than zero NCE gain.

Discussion: The standard in § 200.38(b)(1)(ii) is contained in section 1021(b)(1) of the Act. Using the Department's common reporting scale, this becomes a zero NCE performance. Thus, at a minimum, a school must be identified as needing program improvement if it shows no improvement or a decline in the aggregate performance of its children. However, an SEA in establishing standards in accordance with § 200.37(a)(2)(i), or an LEA in its application may establish a higher standard for identifying schools in need of program improvement. This would be done by establishing desired outcomes that reflect those higher standards.

Changes: None.

Comment: Two commenters asked how equity could be achieved if more resources are devoted to schools and students in need of program improvement.

Discussion: Nothing in Chapter 1 demands that every child receive the same per pupil amount of services. Rather, as indicated in § 200.33(a), resources should be allocated to a school according to the number and needs of the children to be served, the degree of educational deprivation of the children, and the services to be provided. As a result, children with more severe needs may receive added resources. Likewise, children and schools in need of program improvement may also require additional resources to meet their needs.

Changes: None.

Comment: One commenter recommended that more than one year be allowed to show improvement under § 200.38(b) (2)–(5) before implementing a joint SEA/LEA plan. The commenter argued that it often takes a year just to train teachers, develop new materials, and implement the new program in the classroom. Another commenter suggested that SEAs should encourage LEAs to consider two- or three-year plans. The commenter suggested these LEA plans could establish yearly benchmarks and the joint SEA/LEA plan could then modify the LEA plans as needed instead of disrupting the process with a new joint plan.

Discussion: According to the Conference Report accompanying the Act, the conferees intended the SEAs and LEAs have "no more than, but at least, one full school year during which the plan is in effect before judging its effectiveness is raising aggregate student performance." H.R. Rept. 567, 100th Cong., 2d Sess. 326 (1988). Section 200.38(b)(5)(ii) of the final regulations implements this intent. If improvement is not demonstrated after the full school year, section 1021(d) of the Act requires the SEA and LEA to develop a joint plan. Nothing in the statute or regulations, however, requires the joint plan to be radically different from the LEA's original plan. The SEA and LEA may adopt the LEA's plan as the joint plan if they decide that the LEA's plan is adequate and merely needs more time to effect the desired changes.

Changes: None.

Comment: Two commenters asked if an SEA could identify for its LEAs those schools in need of program improvement. Another commenter asked

whether an LEA is required by the Act or the regulations to provide individual school achievement data to the SEA unless the school is in need of program improvement.

Discussion: Section 1021(b) of the Act makes clear that the identification of schools in need of program improvement, and development and implementation of the initial school improvement plan, is the responsibility of the LEA.

Changes: None.

Comment: One commenter opposed the requirement in § 200.38(b)(3)(i) that an LEA submit plans for school improvement to the SEA for the first year of implementation, because only minor changes may be needed in its ongoing project. The commenter, however, supported submitting the plans in the second or third years if appropriate. Other commenters suggested that the plans should be available to the SEA, rather than be submitted to the SEA. Another commenter asked whether the plans must be submitted to the SEA for approval, or only for review.

Discussion: Section 1021(b)(1)(B) of the Act requires an LEA to submit to the SEA the plan for any school identified as needing program improvement. Thus, the LEA must submit each plan, even for the first year of the plan's implementation, and may not merely make it available to the SEA. The plans are not submitted for SEA approval; however, section 1012(b) of the Act, which requires SEA approval of LEA applications, does provide general approval authority to SEAs of the entire LEA project, which will include program improvement activities. Moreover, the SEA could certainly provide technical assistance to the LEA, if requested. In addition, under § 200.37(b)(1)(ii)(A) of the final regulations, the SEA must, with the least possible paperwork and burden, follow the progress of any school identified by an LEA under § 200.38(b)(1).

Changes: None.

Comment: One commenter suggested that the SEA be involved in all phases of the program improvement process.

Discussion: Under section 1021 of the Act, an LEA is responsible for identifying initially the schools in need of program improvement and implementing school improvement plans in those schools. The LEA must submit the plans to the SEA in accordance with section 1021(b)(1)(B). At this point, the SEA must follow the progress of the schools undergoing program improvement as required by § 200.37(b)(1)(ii)(A). Therefore, there is some involvement of the SEA during the initial plan. However, it is not until a joint plan is required that the SEA becomes substantively involved in the program improvement process. Of course, the SEA could provide technical assistance at any time.

Changes: None.

Comment: Several commenters commented on the provision in § 200.38(b)(4)(i) that relieves an LEA from developing a school improvement plan for a school that served 10 or fewer children for the entire school year. Some commenters supported the provision. Others recommended that the number be increased to 20 or 30 children so that aggregate performance would be more stable and staff resources would be utilized more efficiently.

Discussion: Section 1021(b)(2) of the Act exempts from the program improvement requirements only schools that have 10 or fewer children served during an entire program year.

Changes: None.

Comment: One commenter recommended revising § 200.38(b)(4)(ii) to make clear that an SEA has the authority to determine when a school improvement plan under development does not need to be implemented.

Discussion: Section 200.38(b)(4)(ii) of the final regulations authorizes an LEA, not an SEA, to make the decision that a school improvement plan is no longer needed because data have become available demonstrating that the requisite improvement has occurred.

Changes: None.

Comment: A number of commenters opposed the timeline under which an SEA and LEA had to develop and implement a joint plan in § 200.38(b)(6) of the proposed regulations. Commenters noted the difficulty involved in developing a new plan during the summer, because school personnel are not always available then. In addition, commenters noted the new plan might require personnel changes and staff development activities that could not be done prior to the opening of school in the fall. Several commenters recommended that the joint plan be implemented by a realistic date agreed upon by the SEA and LEA or by the second school year.

Discussion: Section 200.38(b)(6) of the proposed regulations required an SEA/LEA joint plan to be developed and implemented by the beginning of the school year following the full year the LEA's plan was in effect. Essentially, this provision allowed, at most, only three months during the summer to develop and implement the joint plan. Moreover, if an LEA was on a fall-fall testing cycle, the LEA would likely not even have had the data it needed to determine whether a joint plan was needed until after the beginning of the next school year. Therefore, the Secretary has determined that, in some instances, more time may be needed for SEAs and LEAs to develop and fully implement joint plans. The final regulations require that a joint plan be developed and fully implemented as soon as possible but no later than by the beginning of the second school year following the full year during which the LEA's plan was in effect. However, to ensure that this extension does not result in ineffective programs continuing for another full year to the detriment of educationally deprived children, § 200.38(b)(6)(iii)(B) requires the SEA and LEA to implement portions of the joint plan as soon as possible in those cases in which full implementation requires the maximum time allowed.

Changes: Section 200.38(b)(6) has been revised to permit an additional year for an SEA and LEA to develop and fully implement a joint plan. However, if the maximum time is required, § 200.38(b)(6)(iii)(B) requires portions of the plan to be implemented as soon as possible.

Comment: One commenter asked if an SEA has authority to withhold approval of an LEA's application if agreement regarding a joint plan cannot be reached between the SEA and LEA as required under section 1021(i) of the Act.

Discussion: Section 1012(a) of the Act requires that the SEA ensure that its LEAs comply with all applicable statutory and regulatory provisions pertaining to programs under this part. Section 1012(b) of the Act requires that the SEA approve the LEA's application. Further, § 200.38(b)(6) section 1021(i) of the Act requires that a joint plan under this part must be developed with the SEA. The joint plan must be approved by both the LEA and SEA before the plan may be implemented. The Secretary believes that the SEA may withhold approval of the LEA's application if the plan is not approved by both parties. The Secretary is aware that this interpretation gives significant authority to the SEA. However, the Secretary is concerned that ineffective programs not be allowed to continue, and believes that the timelines provide sufficient latitude for the LEA and SEA to agree on the necessary program modifications.

Changes: None.

Comment: A number of comments were received on the local conditions in § 200.38(c). Two commenters supported the provision in § 200.38(c)(2) that local conditions may be considered at any point in the program improvement

process. Several commenters requested clarification in the regulations that local conditions may not be used to justify setting lower standards for program quality or to excuse an LEA or SEA from its program improvement responsibilities. Other commenters requested expanding the list of local conditions to include "establishing a timeline for implementing each school's plan" and "strikes, job actions, court orders or other redistricting of school attendance zones, major accidents, natural disasters, epidemics, or health emergencies."

Discussion: Section 1021(e) of the Act requires an LES and SEA, in performing their program improvement responsibilities, to take into consideration five special local conditions. As written in the statute, those conditions are an inclusive list. Thus, the final regulations cannot expand the list to include other local conditions. Local conditions are not meant to excuse an LEA or SEA from fulfilling their program improvement responsibilities or to justify setting low standards. Rather, in designing projects and allocation funds to schools, LEAs should take these factors into consideration. When these factors cannot be determined beforehand, they may become legitimate mitigating factors that may affect, for example, how substantial progress toward meeting desired outcomes will be measured and whether certain schools are identified as needing program improvement.

Changes: None.

Comment: Two commenters expressed concern regarding the potential paperwork and reporting burden created by the student program improvement requirements in § 200.38(d), particularly if the information must be reported to the SEA.

Discussion: Section 1021(f) of the Act requires each LEA to: (1) Identify students who have been served for a year and have not met the standards in section 1021(b); (2) consider modifications in the program to better serve those students; and (3) conduct a thorough assessment of the educational needs of students who remain in the program after two consecutive years and have not met the standards in section 1021(b). Section 200.38(d) of the final regulations essentially implements these statutory requirements. Nothing in the statute or regulations, however, requires an LEA to submit the data it collects on individual students to the SEA.

Changes: None.

Comment: One commenter asked whether student progress had to be measured on an individual or aggregate basis.

Discussion: Under section 1021(f) of the Act, and LEA must measure student progress on an individual basis. Otherwise, this requirement would be no different from measuring the progress of students in a school, which is the basis for school program improvement under section 1021(b) of the Act.

Changes: None.

Comment: One commenter asked whether an LEA must evaluate specific subject areas in assessing student improvement need, noting that such assessment could involve considerable burden for the LEA.

Discussion: An LEA must assess student improvement needs on the same basis as the LEA assesses school improvement needs. Thus, the LEA must assess a student's performance in the primary area in which the student is receiving instruction, unless the student is receiving relatively equal amounts of instruction in two more areas. In those cases, the LEA must assess progress in each area. In addition, the LEA must assess progress toward any desired outcomes the LEA has established. If these concern specific subject areas, then the LEA would have to assess student improvement in those areas too.

Changes: None.

Comment: One commenter requested that an LEA be required to consult with parents in conducting student program improvement efforts. The commener wished to ensure that parents be directly involved in the process.

Discussion: Section 200.38(a)(1)(ii) of the final regulations requires an LEA to make the results of its annual review under § 200.38(a), which identifies students in need of program improvement, available to parents. In addition, § 200.34(a) requires an LEA to implement programs, activities, and procedures for involving parents, including obtaining parent input in the planning, design, and implementation of the Chapter 1 LEA Program. That section also requires that the activities and procedures must be planned and implemented with meaningful consultation with parents of participating children. These sections, therefore, already provide for meaningful consultation with parents in an LEA's student improvement efforts.

Changes: None.

Comment: Several commenters questioned the definition of a "thorough assessment" of educational needs in § 200.38(d)(3), suggesting that the assessment be easy and not burdensome. If the thorough assessment shows no improvement or a decline in a child's achievement, one commenter suggested that the regulations require the LEA to modify the child's program. Another commenter requested that the regulations make clear that an LEA is not required to develop an individual educational plan for each child.

Discussion: Section 1021(f)(3) of the Act requires an LEA to conduct a "thorough assessment" of the educational needs of students who remain in the program after two consecutive years of participation and have not met the standards in section 1021(b). This assessment must be sufficient to determine what the specific educational needs of the students are. Once the assessment is completed, § 200.38(d)(3) of the final regulations requires an LEA, if appropriate, to use the results of the needs assessment to modify the Chapter 1 project to meet the student's needs. The LEA, however, is not required to develop an individual educational plan for each student. The Secretary feels such a requirement goes beyond the intent of the statute and would place undue burden on LEAs.

Changes: None.

Comment: One commenter recommended that § 200.38 make clear that program improvement requirements apply to services for private school children, including those provided by a bypass contractor. The commenter was concerned that the term "school program improvement" might be interpreted to mean public schools only.

Discussion: Program and student improvement requirements in section 1021 of the Act apply to all children, public and private, participating in Chapter 1 projects. Section 200.38(e) of the final regulations makes clear that these requirements apply to the services provided to private school children. The requirements are also applicable to bypass contractors.

Changes: None.

Comment: Several commenters objected to the requirement in § 200.38(f) that LEAs begin to identify schools and students in need of program improvement on the basis of data gathered before or during the 1988–89 school year because section 1491(c) of the Act provides that the 1988–89 school year is a transition year in which the provisions of either the new Act or Chapter 1 of ECIA may be followed. Another commenter questioned what data should be used for program improvement purposes if the required data are not available by the end of the 1988–89 school year.

Discussion: Because the program improvement requirements are the

centerpiece of the new Act, the Secretary is interested in implementing those requirements as soon as possible in order that schools and students in need of program improvement are identified and begin to receive assistance. In addition, the Secretary believes that the correct interpretation of the transition year provision means that, if they desired to do so, LEAs could have implemented program improvement activities during 1988–89—not that these required activities could be delayed for one year beyond the date on which the provision comes into effect. The Secretary is aware that LEAs have not established desired outcomes for the 1988–89 school year and may not be testing on an annual basis. Thus, for the first year LEAs will have to measure aggregate performance under § 200.38(b)(1)(ii) and student achievement under § 200.38(d)(1)(ii) based on the best data the LEAs have available.

Section 200.39 How May Personnel be Assigned Non-Chapter 1 Duties?

Comment: Several commenters requested that the reference to homeroom supervision as an allowable supervisory duty be removed. The commenters objected to its inclusion because they believe it is not a supervisory duty; it supplants the LEA's responsibility; and it takes time away from needed Chapter 1 activities. Others requested deletion of the entire listing of activities, noting that Chapter 1 teachers need more time to implement the Chapter 1 program, that the LEA basic program will be supplanted by the Chapter 1 program, and that Chapter 1 teachers have more responsibilities than district teachers and there is insufficient time to do what is essential. One commenter questioned whether curriculum activities are supervisory.

Discussion: Nothing in § 200.39 requires an LEA to assign Chapter 1 teachers non-Chapter 1 duties. Rather, § 200.39 provides limited authority to do so, if the LEA considers those duties to be appropriate. The duties must be duties that are also assigned to similarly situated personnel and may not exceed the time limits specified in § 200.39(a)(2). Section 1453(a) of the Act makes clear that non-Chapter 1 duties need not be limited to classroom instruction. The House Report accompanying the Act makes specific reference to homeroom supervision and curriculum committees as activities that may be allowed under this provision. H.R. Rept. 95, 100th Cong., 1st Sess. 35 (1987). Based on the expanded examples in this legislative history, the Secretary believes that the term "supervisory" in the Act must be interpreted more broadly than the meaning of the term when referring to lunchroom, hall, and playground supervision. That is, the supervision may include duties that do not require the direct supervision of children. The Secretary believes that assignments of Chapter 1 teachers to curriculum committees, for example, are "supervisory" in that the teacher are in effect involved in decisions concerning instructional programs and materials.

Changes: Although no change has been made to the content, the title has been revised to refer to"non-Chapter 1" duties rather than supervisory duties.

Comment: Two commenters asked whether supervisory duties include using aides as substitute teachers, because that use would replace local responsibility in that area.

Discussion: There is nothing in the statute or the regulations to prohibit the assignment of personnel paid entirely with Chapter 1 funds to substitute teaching duties. However, this can only be done within the allowed proportion of time as required in § 200.39(b)(2), and if similarly situated non-Chapter 1 personnel at the same school site are also assigned to substitute teaching duties.

Changes: None.

Comment: One commenter questioned if Chapter 1 aides could perform supervisory duties if the only aides the district employed were paid with Chapter 1 funds. The commenter noted that, in this instance, there are no similarly situated personnel with whom Chapter 1 aides may be compared.

Discussion: Section 200.39(a) requires that similarly situated personnel at the same school site, who are not paid with Chapter 1 funds, must also be assigned the duties. If the LEA does not employ non-Chapter 1 aides, the LEA should determine if there are other similarly situated personnel at the site who are assigned the supervisory duties in order to assign those duties to the Chapter 1 aides. If no such persons exist, Chapter 1 aides may not be used to perform non-Chapter 1 duties.

Changes: None.

Comment: One commenter requested an explicit definition of the limitations associated with non-Chapter 1 duties. The commenter was concerned that, absent certain limitations, Chapter 1 personnel might be asked to perform any duty at all.

Discussion: The limitations are included in § 200.39(a) of the regulations. In revising Chapter 1, Congress made clear its intention to provide LEAs with more flexibility with regard to the use of Chapter 1-paid personnel to perform, in a limited manner, non-Chapter 1 activities. H.R. Rept. 95, 100th Cong., 1st Sess. 34 (1987). The regulations reflect that intent.

Changes: None.

Comment: Two commenters expressed a concern regarding the time allowed to perform non-Chapter 1 duties. One opposed the 60-minute limitation because of the conflict that would occur at a school site where non-Chapter 1 staff members are expected to work at supervisory duties for more than 60 minutes per day on a schedule that applies to all teachers in the building. The other suggested that one period per day be defined as 60 minutes per day, if appropriate, because of the possibility of a period varying from 35–55 minutes within a district depending on the instructional approach used.

Discussion: Section 1453(a) of the Act limits the amount of time a Chapter 1-paid staff member can be assigned to non-Chapter 1 duties to not more than either the amount of time similarly situated personnel at the same site are assigned or one period. Although periods in secondary schools are fairly uniform within a school, elementary school periods vary by class and subject. Therefore, the Secretary has established 60 minutes as the maximum per day for non-Chapter 1 duties. However, the proportion of time may not exceed the least of the three criteria in § 200.39(a)(2).

Changes: None.

Comment: One commenter requested deletion of the language permitting weekly, monthly, and annual calculations so that time spent on non-Chapter 1 duties is not accumulated but rather performed on a regular daily basis. The commenter was concerned that, if it is accumulated, Chapter 1 personnel could be made to perform non-Chapter 1 duties exclusively for a period of time. Another commenter requested deletion of the language permitting annual calculations since there is no specific rationale for it. Another commenter suggested the regulations provide for daily calculation of time for some duties, such as study hall supervision, and limit weekly, monthly, or annual calculations to such activities as services on curriculum committees.

Discussion: Section 1453(a)(1) of the Act refers to "the same proportion of total work time as prevails with respect to similarly situated personnel at the same school site." In order to allow maximum flexibility to the LEA, the Secretary believes that calculating total work time using various periods of time—daily, weekly, monthly,

annually—within the total school year is appropriate.

Changes: None.

Comment: One commenter suggested that the regulations should clarify how § 200.39 applies to part-time personnel fully paid with Chapter 1 funds. The commenter noted that, absent the clarification, a person paid with Chapter 1 funds could be employed for two hours per day, one hour of which was spent supervising the lunchroom, if locally funded aides, who were full-time employees, were so used. The commenter was concerned that, in this instance, Chapter 1-paid staff members would be spending significant portions of their time performing non-Chapter 1 duties.

Discussion: Section 1453(a) of the Act and § 200.39(a)(2) refer primarily to full-time employees, and make specific reference to similarly situated personnel. If an LEA employs part-time Chapter 1 persons, these persons may only be assigned non-Chapter 1 duties on a basis that is proportionate to the time that similarly situated full-time personnel are assigned the same duties.

Changes: None.

Section 200.41 What Maintenance of Effort Requirements Apply to This Program?

Comment: One commenter questioned the example following § 200.41(b) concerning an LEA's failure to maintain effort. The commenter interpreted the example as comparing the same two years to compute maintenance of effort for the year following an LEA's failure to maintain effort as were compared in the year the LEA actually failed to maintain effort.

Discussion: The example in § 200.41(b) has a definite limited purpose: to demonstrate how to calculate effort for the "second preceding fiscal year" in determining whether an LEA maintained effort in the year following a failure to maintain effort. The example is necessary because the "second preceding fiscal year" is the year the LEA failed to maintain effort and, therefore, the LEA's actual expenditures cannot be used. As a result, the example instructs the SEA to use 90 percent of the "third preceding fiscal year." Once the SEA follows the example to arrive at a figure for the "second preceding fiscal year," the SEA must then compare expenditures from the "first preceding fiscal year" to determine if the LEA actually maintained effort in the year following the LEA's failure to maintain effort. Thus, the SEA must take an additional step after it follows the example.

Changes: None.

Comment: One commenter recommended that § 200.41(a)(1) be revised to indicate that the SEA shall allocate funds rather than pay funds to an LEA because SEAs pay LEAs after funds are expended on an approved project.

Discussion: The Secretary agrees that the requirement should refer to the State providing an LEA its full allocation, rather than payment of funds.

Changes: Section 200.41(a)(1) has been revised to state that an LEA may receive its full allocation of Chapter 1 funds, if it meets the maintenance of effort requirement.

Section 200.43 What Comparability of Services Requirements Apply to This Program?

Comment: One commenter suggested that the regulations be no more restrictive than the statute and provide flexibility that was previously given to the SEAs and LEAs. The commenter also requested that the word "shall" in § 200.43(c)(1) be changed to "may." Several commenters opposed this section because it requires excessive transmission of paperwork from the LEA to SEA. One commenter requested a definition of "written procedures." Another commenter suggested that SEAs be given the option of determining comparability of services on the basis of an instructional staff-to-pupil ratio or on the basis of an instructional staff salary-to-pupil ratio, as was formerly allowed, rather than restricting determinations to the conditions contained in § 200.43(c)(1).

Discussion: On further review, the Secretary agrees that the proposed regulations appeared to place more restrictions and requirements on the LEA than the Act. In particular, section 1018(c)(2) sets out one means to demonstrate comparability, but does not require that this method be used.

Changes: Section 200.43(c)(1) has been modified and expanded to allow the LEA to submit an assurance to the SEA that it has carried out the requirements contained in section 1018(c)(2)(A) of the Act or provides the LEA with other options for demonstrating comparability.

Comment: One commenter suggested that the regulations clarify that the amount to be withheld or repaid by an LEA for failing to meet the comparability requirements be the amount by which the LEA failed to comply at the school site that was not comparable.

Discussion: This provision is included in § 200.43(e)(2) of the regulations.

Changes: None.

Comment: Several commenters suggested alternatives for an LEA to use when demonstrating comparability, including permitting the LEA to use grouping, clustering, or pairing of schools or attendance areas. Another commenter recommended that schools with fewer than 100 children be exempted from the requirement.

Discussion: In the past, Chapter 1 has permitted a number of alternative methods for determining comparability. Specific examples of alternatives will be included in the policy manual.

Changes: None.

Section 200.44 What Supplement, Not Supplant Requirement Applies to This Program?

Comment: One commenter recommended that additional regulations be developed to assist in preventing future audit exceptions to assist SEAs and LEAs in meeting the requirements of this section. The commenter was concerned that, absent specific regulations, SEAs and LEAs might interpret statutory provisions in a manner different than that of auditors. Another commenter recommended including a list of examples of in-class and whole-class teaching methods to provide additional guidance in this area.

Discussion: The Secretary is sensitive to the concern for additional regulation is this area; however, balanced against the need to provide State and local flexibility, he does not believe additional regulation is justified. However, to provide guidance, the Department will include in the policy manual specific examples of delivery systems that are in compliance with the supplement, not supplant requirements.

Changes: None.

Section 200.46 What Is The Maximum Amount of Funds an LEA May Carryover?

Comment: One commenter requested that if an LEA is bypassed with respect to the requirement to serve children enrolled in private schools, the LEA be exempted from the limitations on carryover funds. The commenter noted that funds withheld from the LEA to implement a bypass that are not expended by the contractor may be returned too late for the LEA to expend in a timely manner, resulting in the LEA's exceeding the carryover limitation through no fault of its own.

Discussion: The Secretary agrees that unexpended funds from an amount withheld from an LEA to implement a bypass that are subsequently made available to the LEA are not to be

included when determining limitations on carryover amounts.

Changes: None.

Section 200.50 What Are an LEA's Responsibilities for Providing Chapter 1 Services to Children in Private Schools?

Comment: One commenter questioned whether all of the guidance the Department has issued on *Aguilar* v. *Felton* is included in the regulations.

Discussion: The regulations do not contain all of the Department's guidance concerning implementation of the Supreme Court's decision in *Aguilar* v. *Felton*. The Secretary intends to include the guidance not incorporated into this regulation in the Chapter 1 policy manual.

Changes: None.

Comment: Several commenters recommended that the complaint provisions in § 200.50(b) be modified to require initial contact with the LEA and early involvement by the SEA. One of the commenters suggested that a complainant be required to exhaust the complaint procedures in § 200.72 of the proposed regulations before filing a complaint with the Secretary. Commenters were concerned that bypassing local efforts to resolve complaints would result in too many complaints being raised to the Department, some of which may have been resolved by the LEA or SEA.

Discussion: Section 1017(b)(3)(A) of the Act authorizes parents, teachers, or other concerned organizations or individuals to file complaints with the Secretary if they believe the requirements for providing Chapter 1 services to private school children have been violated. Under this section, the Secretary must investigate and resolve each complaint within 120 days. According to the legislative history accompanying this section, the mandatory time limit was included to "insure that educationally deprived children in private schools do not go without needed services for long periods of time." H.R. Rept. 95, 100th Cong., 1st Sess. 30 (1987). Therefore, the Secretary believes that requiring a complainant to exhaust the State and local complaint procedures required under §§ 200.73 through 200.75 before filing with the Secretary would abrogate the purpose for speedy resolution behind the 120-day requirement. Moreover, because section 1017 authorizes a complainant to file directly with the Secretary, it would be inappropriate for the Secretary to require the complainant to file first with the LEA or SEA. From a practical standpoint, however, the Secretary encourages a complainant to attempt to resolve the concerns at the local and State levels before complaining to the Secretary. Moreover, the Secretary will first look to the State and local levels for information in resolving the complaint.

Changes: None.

Section 200.51 What are the Requirements for Consultation With Private School Officials?

Comment: One commenter questioned with what level of private school official an LEA is required to consult?

Discussion: Section 1017(a) of the Act requires an LEA to consult with "appropriate private school officials." The level of the official with whom an LEA must consult will vary depending upon the organization of the private school. However, it must be an individual who can adequately represent the needs of the private school children.

Changes: None.

Section 200.52 What Factors Does an LEA Use in Determining Equitable Participation?

Comment: Two commenters questioned whether, particularly in implementing alternative delivery systems after *Aguilar* v. *Felton*, an LEA may spend less than equal amounts on services for private school children if private school officials agree to accept those services.

Discussion: Under section 1017(a) of the Act, eligible private school children must receive services that are equitable in comparison to the Chapter 1 services provided to public school children in terms of both the quality and the costs of the services. When both public and private school children are receiving the same services, the equitability requirement is easily met. However, in providing Chapter 1 services to private school children through alternative delivery systems such as computer-assisted instruction (CAI), the question of equitability is more difficult. This may be especially true in a year after computers are purchased because, after the initial purchase of equipment, CAI normally provides services at a cost less than the typical Chapter 1 program. Whether the services provided by an LEA to private school children are equitable to those provided to public school children is measured by the factors in § 200.52(b)(2). If CAI alone, for example, does not provide this equity, the LEA may make up the difference by offering additional services, such as tutorial centers or appropriate summer school programs. Of course, private school children may decide to participate in only a portion of the services offered, and the offer may still be considered equitable.

Changes: None.

Comment: Commenters requested deletion of the provision in § 200.52(a)(2) that requires an LEA to pay for reasonable and necessary administrative costs of providing services to public and private school children, including capital expenses, from the LEA's whole allocation of Chapter 1 funds before the LEA determines equal expenditures. Some commenters objected specifically to capital expenses being included as administrative costs that are taken "off the top" of the LEA's allocation. Commenters believed these costs should be included in determining if the requirement that expenditures per pupil for services to private school children be equal to those for children attending public schools has been met.

Discussion: Section 1017 of the Act requires that an LEA provide private school children with special educational services as will ensure those children's participation on an equitable basis with children in public schools. Expenditures for those educational services to private school children must be equal (taking into account the number and needs of the private school children) to expenditures for public school children. Particularly since *Aguilar* v. *Felton*, the administrative costs of providing educational services to private school children have become greater than the costs of providing such services to public school children. If these costs were deducted solely from the portion of the LEA's Chapter 1 funds designated to provide services to private school children, the remaining funds would not be sufficient to provide equitable instructional services to those children, thus defeating the purpose of the statutory provision. Therefore, in order to ensure that equitable services are provided to both public and private school children, the administrative costs are to be "off the top" of the LEA's allocation.

Changes: None.

Comment: Commenters requested clarification of the provision in § 200.52(b)(2)(i) that requires an LEA to assess, address, and evaluate the specific needs and educational progress of eligible private school children "on the same basis as public school children." Commenters alleged that some LEAs do not assess the needs and progress of private school children. Moreover, commenters urged that if private school children have different needs, they should receive different services.

Discussion: Public and private school children participate in the same, not a

different, Chapter 1 project. To design a project properly, an LEA must, under section 1014(b) of the Act, identify educationally deprived children in all eligible school attendance areas, including educationally deprived children in private schools. Based on the information obtained, including the information on private school children, the LEA must determine the grade levels and instructional areas on which its Chapter 1 project will concentrate. Within the basic framework, the LEA may vary the instructional areas and grade levels among school attendance areas if the needs assessment data support those differences. For example, if the LEA's needs assessment identifies, in general, the greatest needs in reading in grades 1–3, but several schools have greater needs in grades 4–6, the LEA may vary the grade levels it serves to meet those different needs. Similarly, needs may also vary within an attendance area. For instance, while reading may be the greatest general instructional area of need, mathematics may be a greater need in one or more grades within the attendance area. Such differences in needs may also occur with respect to eligible private school children.

Changes: Section 200.31(b)(2) has been revised to clarify that an LEA must identify the general instructional areas and grade levels on which the program will focus on the basis of information on needs gathered by identifying all educationally deprived children, including those children in private schools. As that section indicates, instructional areas and grade levels may vary among and within school attendance areas if the needs assessment data support differing needs.

Section 200.55 May Funds be Used for Construction of Private School Facilities?

Comment: Two commenters recommended specifically excluding costs for security and utility installations, electrical outlets and wiring, dedicated telephone lines, etc., associated with providing Chapter 1 CAI in private schools from § 200.55, which prohibits the use of Chapter 1 funds for repairs, minor remodeling, or construction of private school facilities. Commenters felt that, absent the exclusion, LEAs would be reluctant to pay these costs.

Discussion: The Department stated in its guidance on implementing *Aguilar* v. *Felton* that reasonable installation costs of providing Chapter 1 CAI are allowable under certain circumstances. For example, installation would be permissible if the installation is necessary for the Chapter 1 program to operate; the cost is related solely to the Chapter 1 program and does not otherwise correct a deficiency in the private school facility; the installation does not result in any improvement to the private school facility other than the electrical wiring related to Chapter 1 computers; and the representatives of the private school agree either to reimburse the Chapter 1 program for the residual value of the wiring (the installation cost minus depreciation) or to have the LEA remove the wiring if the CAI program is terminated at the site. The Secretary intends to include this guidance in the Chapter 1 policy manual.

Changes: None.

Section 200.57 How Does an LEA Receive a Payment for Capital Expenses?

Comment: A number of comments were received on the definition of capital expenses in § 200.57(a)(2). Some commenters requested expansion of the definition, particularly to include instructional equipment such as computers. One commenter interpreted § 200.57(a)(2)(ii) as prohibiting the purchase of computers to provide instruction to private school children.

Discussion: Under section 1017(d)(4) of the Act, capital expenses are limited to expenditures for noninstructional goods and services that are incurred as a result of implementation of alternative delivery systems to comply with the requirements of *Aguilar* v. *Felton*. Section 1017(d)(4) sets out examples of such noninstructional goods and services, such as purchase, lease, and rental of real and personal property, insurance and maintenance costs, and transportation costs. Section 200.57(a)(2)(i) lists the statutory examples. Section 200.57(a)(2)(ii) specifically excludes from the definition of capital expenses instructional equipment such as computers, because it does not fall within the statutory meaning of noninstructional goods and services.

Changes: None.

Comment: One commenter questioned whether an LEA may establish a date later than July 1, 1985 for capital expense purposes if the LEA did not incur capital expenses until that later date.

Discussion: Section 1017(d)(3) establishes July 1, 1985—the date of the Supreme Court's decision in *Aguilar* v. *Felton*—as the relevant date for capital expense purposes. Accordingly, an LEA may not receive payment for any capital expenses incurred before this date. However, an LEA may receive payment for capital expenses incurred any time—even several years—after this date

Changes: None.

Comment: One commenter asked what would happen if an LEA applied for a payment for capital expenses on the basis of an expected increase in the number of private school children and the expected increase did not materialize. The commenter was concerned that the LEA might be required to repay those funds. Another commenter recommended that an LEA document its expected increases to ensure capital expense funds will be well spent.

Discussion: One of the criteria an SEA may use to make payments to LEAs for capital expenses is the extent to which those payments would be used to increase the number or percentage of private school children served. Therefore, an LEA that applies for payments on this basis should have information to support a reasonable expectation that, with payments for capital expenses, the LEA could increase the number or percentage of private school children served. However, if the LEA has such information, but the anticipated numbers or percentages of private school children do not materialize, the LEA would not be required to repay the capital expense payments.

Changes: Section 200.57(b)(5) has been added to require in an LEA's application for payments for capital expenses information sufficient to support anticipated increases in the number or percentage of private school children to be served, if the LEA is applying on that basis.

Comment: A number of commenters commented on the criteria for determining need for capital expense payments in § 200.57(c). One commenter recommended that each LEA be allowed to determine the number or percentage of private school children to be served and requested deleting the SEA's authority to establish criteria. Another commenter suggested that the criteria in the regulations be deleted and that SEAs establish needs and priorities for distribution. Other commenters recommended that the criteria clearly give priority for the distribution of payments for capital expenses to LEAs to increase the number or percentage of private school children being served to pre-*Felton* levels, since the commenter felt that increasing participation is more important than repaying LEAs for costs already incurred. Still other commenters supported the flexibility to reimburse LEAs that had taken capital expenses

"off-the-top" of their Chapter 1 allocations.

Discussion: Section 1017(d)(1) of the Act requires each SEA to distribute the funds allocated to it for payments for capital expenses to its LEAs "based on the degree of need as set forth in the application." To determine LEAs' needs for capital expense payments, an SEA must establish criteria. Section 200.57(c) sets out examples of criteria an SEA may use. The regulations do not require an SEA to use any particular criterion or to give priority to LEAs that will use capital expense payments to increase the number or percentage of private school children being served to pre-*Felton* levels. Rather, each SEA has the flexibility to establish its own criteria based on the circumstances in its State. The criteria in this section in no way affect an LEA's decisions regarding the number or percentage of private school children it will serve with Chapter 1 funds.

Changes: None.

Section 200.58 How Does an LEA Use Payments for Capital Expenses?

Comment: Several commenters questioned how payments for capital expenses may be used. One commenter questioned whether a payment reimbursing an LEA for capital expenses could be used to purchase a van. Other commenters questioned whether an LEA could use those payments to provide services to both public and private school children.

Discussion: Payments under section 1017(d) of the Act may be made to reimburse an LEA for capital expenses it paid for from its regular Chapter 1 allocation or to pay for capital expenses an LEA is incurring or will incur in the future. If the payments are for reimbursement, they must be used to provide Chapter 1 services to benefit, to the extent possible, the public and private school children who were or are adversely affected by the LEA's s expenditures for capital expenses. In other words, if the LEA paid for capital expenses "off-the-top" of its total Chapter 1 allocation, it would use its payments for capital expenses to provide services to public and private school children because both public and private school children would have benefited from additional services had the LEA not used Chapter 1 funds for capital expenses. If, for some reason, the LEA paid for capital expenses totally from the funds it set aside to provide services to private school children, the LEA would use its reimbursement for those capital expenses to provide additional services to private school children. An LEA could not use a reimbursement for capital expenses to purchase a van, because reimbursements must be used for services that were lost due to prior costs of capital expenses. An LEA, of course, may use prospective capital expense funds to purchase a van.

Changes: Section 200.58(a)(1) has been revised to make clear that payments to reimburse an LEA for capital expenses it incurred are to be used, to the extent possible, to provide Chapter 1 services to benefit the public and private school children who were adversely affected by the LEA's expenditures for capital expenses.

Comment: One commenter questioned whether the restrictions on carryover funds in section 1432(b) of the Act apply to capital expenses.

Discussion: Section 1432(b) of the Act limits the amount of funds appropriated for a given fiscal year that an LEA may carry over. Section 200.46(a) interprets the phrase "funds appropriated" to be the basic grant and concentration grant funds an LEA is eligible to receive in any given year. Therefore, § 200.46(a) does not apply to capital expenses.

Changes: None.

Comment: One commenter questioned whether an LEA must track separately funds received for capital expenses, noting this would increase paperwork for the LEA.

Discussion: Because capital expenses are awarded as a separate grant for special purposes, they must be accounted for separately.

Changes: Section 200.58(c) has been added to indicate that an LEA must account separately for payments it receives for capital expenses.

Comment: One commenter questioned whether an LEA that was unable to provide services to children who were adversely affected in 1984–85 and subsequent years could use the capital expense funds.

Discussion: Section 200.58(a)(1) requires that capital expense funds be used to benefit, to the extent possible, the children adversely affected by the LEA's expenditures for capital expenses. The intent of the provision is to recognize that there will be circumstances where the same children cannot benefit from the funds. Under those circumstances, the funds may be used to benefit similar groups of children.

Changes: None.

Section 200.70 Does a State Have Authority to Issue State Regulations for the Chapter 1 LEA Program?

Comment: A number of commenters raised questions concerning the relationship between an SEA's responsibility for administering the Chapter 1 LEA Program and the limitations on the SEA's rulemaking authority in § 200.70(b). One commenter questioned whether an SEA could limit the percentage of an LEA's budget to be used to purchase supplies, materials, or other categories of expenditures. Two commenters recommended inserting in the stem in § 200.70(b) the phrase "that limit LEAs' decisions based upon their annual assessment of need affecting funds under this part." On the other hand, several commenters recommended that the regulations clarify that an SEA has the authority to ensure that its LEAs use Chapter 1 funds in accordance with all applicable requirements.

Discussion: LEAs are authorized to use Chapter 1 funds to support activities, described in approved applications, that are reasonable and necessary to carry out the purposes of the Chapter 1 LEA Program. An SEA does not have the authority to impose rigid limitations on reasonable expenditures needed by an LEA to implement an effective program if those expenditures are supported by the LEA's assessment of the special educational needs of Chapter 1 children. However, an SEA has the responsibility under section 1012(b) of the Act to review and approve LEA applications and the responsibility under section 1012(a)(4) to ensure that LEAs comply with all applicable statutory and regulatory provisions. Thus, as § 200.70(c)(2) indicates, an SEA may review the proposed expenditures in an LEA's application to determine that they are supported by the LEA's needs assessment. Moreover, § 200.70(c)(3) makes clear that an SEA has the responsibility to review LEA decisions concerning the use of Chapter 1 funds to ensure that they comply with applicable requirements.

Changes: Section 200.70(c)(2) has been revised to make clear that nothing in § 200.70(b) limits an SEA's authority to review and approve an LEA's application, including determining whether the activities in the application are supported by the LEA's needs assessment. Similarly, § 200.70(c)(3) reiterates an SEA's responsibility to ensure compliance with applicable requirements.

Comment: Two commenters requested that the reference to instructional staff in § 200.70(b)(4) be clarified to include instructional aides. Another commenter interpreted "other essential support services" in § 200.70(b)(5) to include services provided by paraprofessionals such as teacher aides.

Discussion: The Secretary believes that the definitions of instructional staff and support services are best established by LEAs under applicable State laws or regulations. In accordance with section 1451(a)(2) of the Act, however, instructional staff must meet State certification and licensing requirements for education personnel.

Changes: None.

Comment: Numerous comments were received on § 200.70(e) regarding review of rules and regulations by the committee of practitioners. A number of commenters recommended that an SEA be required, rather than encouraged, to convene the committee of practitioners. These commenters felt that to require convening for an emergency regulation, while not doing so in normal circumstances, was inconsistent. Other commenters requested that the regulations make clear that the committee must review any rule or regulation. Several commenters recommended that the committee also be required to review State policies. These commenters noted that the terms "rule" and "regulation" may have differing meanings, and that some States issue binding requirements under other procedures. These commenters felt that the intent of the Act was to cover all these circumstances. Some commenters recommended deletion of the phrase "if one is required by State law" in § 200.70(e)(1)(i)(A) of the proposed regulations, because it is confusing.

Discussion: Section 1451(b) of the Act requires review by a State committee of practitioners "(b)efore publication of any proposed or final State rule or regulation." The proposed regulations attempted to minimize any burden caused by this provision by only requiring review by the committee of practitioners before publication of either a proposed rule, if State law required issuance of proposed rules, or a final rule, if no proposed rule was required. Moreover, the proposed regulations did not require an SEA to convene the committee except after the issuance of an emergency rule where review prior to publication was not possible. On the basis of these comments and upon reconsideration, the Secretary believes changes are necessary. The Secretary recognizes the inconsistency in requiring a State to convene the committee to review emergency rules and regulations while not requiring that the committee be convened to review other regulations. However, the Secretary is concerned with the undue burden that will be placed on States if the committee must be convened to review all rules and regulations. Although the negotiated rulemaking group did not reach consensus on the Department's proposal to convene the committee for major rules and regulations, the Secretary believes that this interpretation represents the most viable means to carry out the intent of the Act. Therefore, a State will be required to convene the committee to review all major rules and regulations and ensure that all other rules and regulations be reviewed before publication by the committee but not necessarily in a meeting. In addition, in a State that does not issue rules or regulations relating to the administration and operation of programs under this part but issues policies that the SEA and LEAs are required to follow, the State must comply with the consultation requirements for issuing rules and regulations.

Changes: Section 200.70(e) has been revised to require a State to convene the committee of practitioners to review any major proposed or final rule or regulation that the SEA and LEAs are required to follow in administering and implementing the Chapter 1 LEA Program. In addition, a change has been made to require that, for a State that does not issue rules or regulations but only issues policies that LEAs must follow, the State must comply with the consultation requirements for issuing rules and regulations.

Comment: Numerous commenters requested that the regulations require, rather than encourage, SEAs to obtain nominations for membership on the committee of practitioners from appropriate organizations. These commenters thought this procedure would ensure that the committee was representative of the various groups named in the Act. One commenter was concerned that there would be a conflict of interest with members nominated by organizations since nominating organizations would be partially responsible for that individual's selection. Another commenter questioned whether an existing State committee, such as the Chapter 2 State Advisory Committee, could serve as the Chapter 1 committee of practitioners

Discussion: Section 1451(b) of the Act specifies the categories of individuals that must be included on the committee of practitioners and requires that a majority of committee members be LEA representatives. The Secretary believes it is inappropriate for the Department to regulate how a State meets this requirement. He continues to encourage SEAs to request nominations from appropriate organizations as an excellent way to obtain qualified representatives. If an existing State committee meets the requirements of the Act, the SEA may decide to have it serve for this purpose. However, as § 200.70(e)(3)(iii) indicates, members of the committee must have knowledge of Chapter 1 and how it is implemented.

Changes: Section 200.70(e)(3)(iii) has been added to require that members of the committee of practitioners have knowledge of Chapter 1.

Comment: A few commenters recommended deletion of § 200.70(e)(3)(i)(E), which requires that the committee of practitioners include representatives of private school children.

Discussion: Section 1017 of the Act requires an LEA, after timely and meaningful consultation with appropriate private school officials, to provide equitable Chapter 1 services to eligible private school children. Given this requirement, it is appropriate that private school representatives be included on the committee of practitioners to advise on rules, regulations, and policies affecting the Chapter 1 LEA Program. In addition, the requirement was agreed to by all parties during the negotiated rulemaking session.

Changes: None.

Section 200.71 How May State Personnel Paid With Funds Available Under This Part be Assigned to State Programs?

Comment: Although supporting the provisions in § 200.71, a number of commenters questioned the requirement to keep time distribution records if SEA staff members perform duties that benefit both programs under this part and State compensatory education programs that are similar to the Chapter 1 program. The commenters contended that it is not possible for the staff members to divide their time between the two programs because their duties benefit both programs and cannot be distinguished.

Discussion: Section 200.71 implements section 1453(b) of the Act which authorizes an SEA to use Chapter 1 funds to pay a portion of the salary costs of employees who are assigned responsibilities for programs under this part and specific State programs if those costs are supported by appropriate time distribution records reflecting the actual amount of time spent by each such employee and costs are charged on a prorated basis to both programs. Under most circumstances, employees who work on both Chapter 1 and State programs perform duties that are specific to one program or the other and

can attribute their time to the appropriate program. In these instances, the employees must, in accordance with § 200.71(b), keep contemporaneous time distribution records reflecting the actual amount of time spent on each program. However, there may be situations where an employee is assigned responsibilities that jointly benefit a State program and programs under this part. For example, an SEA staff member may conduct training sessions for LEAs on improving parent participation in both the Chapter 1 and State programs. Both State-funded personnel and Chapter 1-funded personnel receive the training. The employee cannot determine the actual time spent for each program because parent involvement is a requirement of both programs Thus, the costs to be charged to each program cannot be based on the actual time spent on each program. The Secretary concurs that, under these circumstances, another method may be allowable. For example, the costs could be prorated between the programs on the basis of the proportions of staff from each funding source participating in the training.

Changes: Section 200.71(c) has been added to clarify that, for employees who are assigned responsibilities that jointly benefit programs under this part and special State programs, costs may be prorated on a basis other than actual time spent on specific activities. The regulations also provide an example for further clarification.

Comment: Two commenters questioned whether, in addition to time distribution records, there are other acceptable types of documentation, e.g., a teacher's schedule, to support an individual's time spent on Chapter 1 activities.

Discussion: Section 1453(b) of the Act requires that an employee maintain "time distribution records reflecting the actual amount of time spent" by the employee on Chapter 1 activities. The Secretary believes that a teacher's class schedule specifying the time that the teacher devotes to Chapter 1 activities meets this requirement as long as there is corroborating evidence that the teacher actually carried out the schedule. Examples of acceptable evidence include a teacher's grade book and class rosters and daily attendance records that identify the teacher.

Changes: None.

Section 200.72 What Funds Are Available for an SEA to Carry Out Its Responsibilities?

Comment: Several commenters requested that the regulations clarify whether an SEA may use the funds made available under section 1405 of the Act (Funds for the Implementation of School Improvement Programs) to hire staff for program improvement activities. Other commenters recommended that the regulations provide flexibility for SEAs in the use of these funds. Specifically, the commenters suggested that the funds need to be available for SEA program improvement staff purposes as determined by the SEA and not be dependent on the identification of all schools needing program improvement and the joint agreement by those schools in the use of the funds. Another commenter suggested that there are not enough funds in section 1405 to provide mini-grants to LEAs. Lastly, a commenter recommended that the regulations allow an SEA to hire program improvement staff with State funds and reimburse the State with funds received under section 1405 of the Act for any assistance the staff members provide to a school implementing a program improvement plan under this part.

Discussion: Section 1405(b)(2) of the Act clearly states that funds made available to States under that section must be used for "direct educational services in schools implementing program improvement plans as described under section 1021" of the Act. Moreover, section 1405(b)(3) of the Act clearly requires parents of participating children, school staff, the LEA, and the SEA to jointly agree to the selection of technical assistance providers and the best use of the funds. Section 200.72(b) of the regulations implements these statutory requirements. Therefore, an SEA may use section 1405 funds to hire State staff only if those staff provide direct educational services and if parents, school staffs, and the LEAs to receive services for school improvement jointly agree with the SEA that hiring the State staff is the best use of the funds.

As to the request that the regulations be revised to allow an SEA to use Chapter 1 funds to reimburse the State for time that staff members paid with State funds spend on program improvement activities, the Secretary believes that this violates section 1018(b) of the Act. Section 1018(b) requires that funds received under this part must supplement, and not supplant or replace, regular non-Federal funds. The Secretary believes, however, that it would be permissible for an SEA to use Chapter 1 administrative funds to hire State staff and then use section 1405 funds to reimburse the Chapter 1 account if the requisite agreement is reached.

Changes: None.

Section 200.73 What Complaint Procedures Must an SEA Adopt?

Comment: Several commenters suggested that the complaint procedures required by § 200.72(d) of the proposed regulations should describe the means to be used to inform interested parties of the availability of the procedures. Commenters also recommended that the regulations include, in addition to procedures for resolving complaints that an LEA has violated requirements, similar procedures for resolving complaints about State violations. Lastly, commenters requested that the regulations specifically provide an opportunity for a complainant to appeal an SEA's resolution of a complaint to the Department

Discussion: Section 200.72 of the proposed regulations contained requirements concerning complaint procedures that each SEA would have to adopt. Those regulations were developed, in part, in response to Congress' suggestion in the Conference Report accompanying the Act that the Secretary "issue amended regulations making 34 CFR 76.780–783 applicable to Chapter 1." *See* H.R. Rept. 567, 100th Cong., 2d Sess. 341 (1978). However, subsequent to enactment of the Act but before the proposed Chapter 1 regulations were published, the Secretary published an NPRM proposing changes to the Education Department General Administrative Regulations (EDGAR). *See* 53 FR 31580 (Aug. 18, 1988). One of those proposed changes was the removal of the general complaint procedures in 34 CFR 76.780 through 76.782 of EDGAR and the transfer of those procedures to the regulations implementing Part B of the Education of the Handicapped Act, which had shown the greatest need for the complaint procedures. As a result, the Secretary proposed separate Chapter I complaint procedures. In response to comments on the EDGAR NPRM, the Secretary is reconsidering whether to remove the complaint procedures from EDGAR. Because this issue has not yet been resolved, the Secretary has on an interim basis decided to make the general complaint procedures from EDGAR applicable to the Chapter 1 LEA Program. For the convenience of SEAs, LEAs, and other interested parties, the procedures are included in §§ 200.73 through 200.75. However, paragraphs (b) and (c) of § 76.780 are not included as the statutory references are no longer appropriate. In addition, the acronyms "SEA" and "LEA" replace the terms "State" and "subgrantee" to be

consistent with the remaining regulations under this part. In addition, section 200.73 of the regulations requires that an SEA's written procedures for resolving complaints include any complaint that the SEA or an LEA is in violation of the Federal statute or regulation that apply to a program. Section 200.74 of the regulations also requires that an SEA's complaint procedures include the right to request the Secretary to review the final decision of the SEA. Comments received on the proposed Chapter 1 complaint procedures will be given additional consideration in whatever final action the Secretary takes regarding the EDGAR complaint procedures.

Changes: The separate Chapter 1 complaint procedures in § 200.72 of the proposed regulations have been deleted, and §§ 200.73 through 200.75 incorporate and make applicable to the Chapter 1 LEA Program the general complaint procedures in §§ 76.780 through 76.782 of EDGAR.

Section 200.80 How Does an LEA Evaluate Student Achievement?

Comment: One commenter suggested allowing projects to test children every other year, such as in grades 1, 3, 5, 7, and 9, rather than requiring an annual assessment. This commenter also suggested that increased numbers of children in each State be given the National Assessment of Educational Progress (NAEP) to give valid State results based on that assessment, or allow use of normed tests in even grades and predicted norm test results in odd grades.

Discussion: The use of alternate year results, different instruments in alternate years, or predicted scores would not provide the information required by section 1021 of the Act related to school and student program improvement. Section 1021(a) requires an "annual review" of the program's effectiveness and comparison of gains from one year to the next, which could not be accomplished by these methods. Further, while NAEP test data may be useful at the State level, they could not be used for program improvement at school and individual student levels, as required by section 1021 of the Act.

Changes: None.

Comment: One commenter suggested a complete rewrite of § 200.80, emphasizing that the evaluation should focus solely on the basic and more advanced skills each child is expected to master, based on the desired outcomes included in the LEA's application. The commenter further suggested that the LEA use measures that would provide specific information regarding the degree to which each skill had been mastered, and that assessment of more advanced skills include measurement of reasoning, analysis, interpretation, problem-solving, and decision-making in relation to the particular subjects in which Chapter 1 services were being provided.

Discussion: The Secretary agrees that the type of information the commenter describes is appropriate for Chapter 1 assessment and would be useful for LEAs to include in their evaluations of the Chapter 1 LEA Program. However, § 200.80 is designed to set national standards that can be used for two purposes: (1) Provide data in a manner that may be aggregated into State and national totals as required by section 1019 of the Act; and (2) provide one base of data to be used in program improvement efforts under sections 1020 and 1021 of the Act. The commenter's suggestion, although appropriate at the local level, would not allow for aggregation. In addition, the level of prescription it would entail would not be consistent with Congress' intent that the standards not be "unduly burdensome." See H.R. Rept. 95, 100th Cong., 1st Sess. 25–26 (1987). The report goes on to say that the "existing Chapter 1 Evaluation and Information Reporting System (TIERS) and the existing evaluation models would be appropriate."

Changes: None.

Comment: Several commenters expressed various concerns regarding the use of norm-referenced standardized tests to evaluate the impact of Chapter 1 on a child's achievement. The commenters contended that these tests fail to measure how well Chapter 1 children achieve in the "basic and more advanced skills all children are expected to master" specified in section 1012(b) of the Act; the tests are not necessarily aligned with what is being taught in the Chapter 1 program; competency-based or criterion-referenced tests used by States are more appropriate measures; norm-referenced tests contain cultural and ethnic bias that distorts results; and, in general, the tests are too narrowly based to measure the full impact of the Chapter 1 program.

Discussion: The Secretary is aware of the limitations of norm-referenced standardized tests, and does not intend that they be used by LEAs as the sole measure of the effectiveness of the Chapter 1 LEA Program. Section 200.35 clearly states that, in addition to use of measures of student achievement based on the national standards contained in Subpart H of the regulations. LEAs must also measure how well children attain the desired outcomes included in each LEA's application. LEAs may, and are encouraged to, state their desired outcomes in terms other than scores on standardized achievement tests. Congress made this clear, stating its "intent that measures and standards used to demonstrate progress toward desired outcomes may be something other than nationally normed standardized test scores." H.R. Rept. 567, 100th Cong., 2d Sess. 325 (1988) (Conf. Rept.). However, the use of nationally normed standardized test results, or results of tests that may be equated to nationally normed tests, provides a means to aggregate results to State and national totals, giving an overall, if imperfect, measure of program impact. Although acknowledging the limitations, the Secretary believes that these test scores and their aggregation provide significant and useful information on the success of the Chapter 1 program to LEAs, SEAs, the Department, and the Congress. With regard to the alleged cultural bias of standardized tests, the Secretary recognizes that, in general, many minority group students may not perform as well on standardized tests as white students. Although some attribute these results to culturally biased test items, others believe they may also be indicative of substandard education provided to some minority children. Finally, the Secretary reiterates that scores on nationally normed standardized tests need not be the sole measure used to determine success of students in the Chapter 1 program, any more than they are used solely to determine success of children in the regular program.

Changes: None.

Comment: One commenter recommended deleting § 200.80(a)(2), which prescibes how an LEA must assess the progress of Chapter 1 children in more advanced skills. The commenter contended that the requirements in § 200.35(a)(1), which require evaluation of progress in basic and more advanced skills, are sufficient.

Discussion: Section 200.35(a) contains the requirements placed on LEAs with regard to the evaluation of projects. Section 200 80(a)(2) contains the national standards by which one of those requirements—assessing more advanced skills—will be met. Section 1435(a) of the Act requires the Secretary to develop national standards and provide States and LEAs notification, in advance, of the requirements the standards contain. Sections 200.80 through 200.89 of the regulations carry out the provisions of section 1435(a).

Changes: None.

Comment: Several commenters objected to the requirement in § 200.80(a)(1) that requires assessment in language arts in addition to reading and mathematics. Commenters noted the paucity of testing materials available in listening and speaking skills and questioned the validity of those that are available. Another commenter objected to the increased burden that testing in this additional area may entail.

Discussion: By including language arts as an area for assessment, the Secretary did not intend to increase burden on LEAs; rather, the addition of language arts reflects the growing number of children LEAs report as receiving services in this area. The Secretary assumes that, in general, LEAs provide services in language arts or reading, but not both. If assessment and reporting are limited to reading and mathematics, a growing number of children receiving language arts rather than reading instruction will not be included in the aggregate information submitted to the States and the Department. However, to make clear that this requirement is not meant to increase testing burden, and in response to comments questioning the availability and validity of language arts tests other than reading, the Secretary has modified the requirement. In making this modification, the Secretary believes that for an LEA operating a program that includes both language arts and reading, a test of basic and more advanced reading skills can be used to assess the achievement of the Chapter 1 participants in both areas.

Changes: Section 200.80(a)(1) has been modified to allow LEAs operating Chapter 1 language arts programs to assess achievement of children in these programs using either a language arts or reading test.

Comment: Several commenters expressed concern over the use of reading comprehension and problems and applications subtest scores as measures of more advanced skills in reading and mathematics. Some commenters stated that the measures were inadequate; other commenters pointed out that the term "problems and applications" was not used in all standardized mathematics tests. Other commenters supported the proposed regulation.

Discussion: The Secretary is aware of the limitation of the use of the subtest scores as measures of more advanced skills and expects LEAs will use additional means to assess the impact of the Chapter 1 program on children's mastery of more advanced skills. However, for the purposes of reporting data to State and national levels, it is necessary to have a measure that may be aggregated to State and national totals. Further, the Secretary is committed to gathering data in the manner that imposes the least burden on LEAs. At present, it appears that the subtests stated above will provide the requisite information in a manner that will not impose significant new data gathering responsibilities on LEAs. As new materials to assess more advanced skills become available, the Secretary will review whether the new instruments are more appropriate.

Changes: Section 200.80(a)(2) has been revised to take into account differing terminology regarding the subtests that exist among the various tests.

Comment: Several commenters objected to the use of "comprehension" and "problems and applications" subtest scores as measures of more advanced skills, stating that these scores are highly correlated with overall reading and mathematics scores. Another commenter suggested the regulations should more explicitly require use of composite scores of reading and mathematics tests to parallel the subtest scores used to measure more advanced skills.

Discussion: Although there is some correlation between the subtest scores in reading comprehension and composite reading scores and problems and applications subtest scores and composite mathematics scores, the subtests measure a component of the composite score that most closely approximates more advanced skills. In addition, although stipulating subtest scores for more advanced skills measurement implies that composite scores be used for measurement of basic skills, the Secretary does not intend that this be a requirement. LEAs are free to choose any measurement devices described in § 200.80.

Changes: None.

Comment: Two commenters asked how the estimate of achievement in the absence of Chapter 1 services can be determined.

Discussion: Norm-referenced tests provide the base for expected achievement without additional services such as Chapter 1 provides. For State and locally developed tests, the equating study will likewise provide this information.

Changes: None.

Comment: Numerous commenters objected to the requirement that LEAs report only on test results compiled over a 12-month period, citing that 9-month, fall-spring results should be allowed. The commenters presented a number of reasons: (1) Many children leave school and/or the Chapter 1 program during the summer months; hence, results would be available on fewer children. (2) Testing on an annual cycle would require LEAs to follow children beyond the school year, which would be burdensome. (3) LEAs should be allowed the flexibility to test on 9- or 12-month cycles. (4) Districts choosing spring-to-spring cycles would use the spring test for eligibility, resulting in fewer eligible children, since spring scores are higher than fall ones. (5) The fall-to-fall cycle poses problems with regard to program improvement, since results for schools would not be available until late fall, making program changes during the initial year difficult. (6) Twelve-month testing confounds the results of Chapter 1, because it includes the summer period when children receive no services. (7) There is no legal basis for requiring testing over 12 months, since the House Report states that the TIERS model would be appropriate and TIERS allows testing on a fall-spring cycle. Several additional commenters supported the annual cycle, citing the more valid results the method gives. One commenter suggested that a transition year would allow the LEAs currently on a fall-spring cycle to adjust to an annual one.

Discussion: The Secretary has given serious consideration to the points raised by the commenters and, because of the importance of the issue, will discuss each one at greater length than is usually done. The discussion follows the order of the points raised above.

(1) Although it is true that data on some students will be lost in moving to a 12-month rather than a 9-month cycle, the Secretary believes that the increased validity of the data outweighs this concern. Fall-spring testing, which relies on depressed fall scores as a base, consistently overstates the gains children make in the Chapter 1 program. When retested the next fall, these children have lost a significant portion of the reported gains, only to have that same "gain" determined again the following spring. The 12-month cycle more accurately measures the continuous progress of children in the program, rather than repeatedly measuring the same "gain" several times over.

(2) Although districts will be required to follow children beyond the school year, this requirement is also implicit in section 1021(f) of the Act, which requires LEAs to maintain records on individual students beyond one year.

(3) The Secretary does not intend to restrict the flexibility of LEAs who wish to test on a 9-month cycle. Those LEAs may continue to so test. However, the regulations require that, for reporting

evaluation results under section 1019(a)(2) of the Act and in determining schools and students in need of program improvement under sections 1020 and 1021 of the Act, annual results must be used. LEAs that wish to insert the additional test point required by the 9-month cycle for their own purposes are free to do so.

(4) Use of spring scores may result in fewer children being eligible for Chapter 1; however, this is because fall test scores are apparently artificially depressed. Districts concerned about this may choose a fall-to-fall cycle, which, while not as accurate with regard to selection as a spring-to-spring period, would result in gain scores comparable in validity to the spring-to-spring method.

(5) The fall-to-fall cycle does result in later identification of schools and students in need of program improvement. However, the modified timeline for implementation of both local and joint program improvement plans will allow for either the spring-to-spring or fall-to-fall cycle.

(6) The purpose of the evaluation is to determine the real impact of the Chapter 1 LEA Program on a child's achievement. There is general agreement that the fall test results are artificially depressed—perhaps because of the summer vacation from school. Comparison of this test score with a spring test score taken after the child has had a prolonged time in school apparently inflates the gain. By using an annual cycle, test points, whether both fall or both spring, are comparable, providing a more adequate assessment of the child's real progress.

(7) The House Report states that, in developing national standards, "the existing Chapter 1 Evaluation and Information Reporting System and the existing evaluation models would be appropriate." H.R. Rept. 95, 100th Cong., 1st Sess. 25–26 (1987). The Chapter 1 system has involved both annual and fall-spring test cycles, but, because of its greater validity, the Department has been encouraging LEAs to move to an annual testing cycle. Currently, over half of the reported data is based on annual test results. The Secretary believes the annual cycle is consistent with the requirement that the Department establish national standards for evaluation and with the guidance contained in the House Report. The Secretary is aware, however, that the switch from a fall-spring to an annual testing cycle will require certain adjustments by LEAs, particularly in terms of following students from one grade to the next. Therefore, he has determined that, in some instances, more time may be needed to make this adjustment.

Changes: Section 200.80(b)(2)(ii) has been added to allow LEAs currently measuring achievement on a fall-spring basis to do so for the 1989–90 school year only, if they provide evidence to their SEAs that immediate implementation of the annual cycle would impose substantial hardship.

Comment: Several commenters expressed concern that the 12-month cycle would not allow use of the same form of the test for both pre- and post-tests. Another commenter questioned whether norming dates for an annual test cycle exist.

Discussion: Many nationally normed tests cover more than one grade. Hence, they may be used, within their grade spans, for both pre- and post-tests. In addition, publishers furnish norming dates for annual cycles

Changes: None.

Comment: One commenter stated that there was no way to develop a local norm.

Discussion: Some LEAs provide sufficient data to establish local norms. If they wish, those LEAs may use their local norms in assessing the impact of Chapter 1. If no such norms are available, LEAs must use either State norms or those provided by the test publisher.

Changes: None.

Comment: One commenter suggested revising § 200.80(e) to require use of the current edition of a test or a test published within the last seven years, noting that the edition immediately previous to the current one might be too old to be valid.

Discussion: The Secretary has been concerned about the use of tests normed several years ago to assess Chapter 1 for several reasons: (1) Use of older normed tests provides inflated scores for Chapter 1 students that do not accurately reflect their needs; (2) the higher scores received on older normed tests may exclude from eligibility children who need Chapter 1 services; (3) use of tests normed at different times makes comparison among results difficult; and (4) aggregation of results of tests normed at different times does not provide the most accurate picture of the impact of Chapter 1

Although the Secretary urges all LEAs to use the current edition of a test to assess Chapter 1, he wishes to allow LEAs some flexibility. Since the period between when tests are normed is not controlled by LEAs, the Secretary is concerned that the seven-year time limit suggested by the commenter is arbitrary.

Changes: None.

Section 200.81 What Technical Standards Does an LEA Apply in Evaluating Student Achievement?

Comment: One commenter recommended adding a new provision to § 200.81, specifying that limited English proficient and handicapped children should be assessed on the same basis as other children. That assessment should be based on the full range of services they are provided under Chapter 1 and designed so as not to confuse Chapter 1 effects with other needs. Further, the assessment should be valid for the specific population being assessed. The commenter noted the suggestion followed language included in Senate Report 222, 100th Cong., 2d Sess. 12 (1988).

Discussion: The issue of assessment procedures for limited English proficient and handicapped children was further considered in the House-Senate conference to rectify differences between House and Senate versions of the legislation. The Conference Report contains specific language on this issue. H.R. Rept. 567, 100th Cong.,. 2d Sess. 322–23 (1988) (Conf. Rept.). That language is included in § 200.31(c)(5) of the regulations regarding LEA needs assessment. This is consistent with the discussion in the report that the assessment procedures be designed to identify properly limited English proficient and handicapped children eligible for Chapter 1 services.

Changes: None.

Section 200.82 What Procedures Does an LEA Use in Evaluating Student Achievement?

Comment: One commenter stated that the proposed regulations did not allow for use of criterion-referenced tests, which, in the commenter's State, are used to assess progress in basic and more advanced skills. According to the commenter, the requirement for norm-referenced tests would place an undue burden on LEAs in this State.

Discussion: The provisions in §§ 200.82(b)(2) and 200.83 address the use of other than norm-referenced tests for reporting results of Chapter 1. Moreover, § 200.88(c)(2) specifically allows Chapter 1 funds to be used to perform studies to equate tests, where possible, and conform results of those tests to the Chapter 1 common reporting scale. The Secretary is aware, however, that State and locally developed criterion-referenced tests may not always be able to be equated with nationally normed tests. In these circumstances, the requirement that data be aggregated to State and Federal

levels would not allow use of such tests for purposes of Chapter 1.

Changes. None.

Section 200.83 What Alternative Procedures May an LEA Use?

Comment: One commenter suggested allowing States to use nationally normed tests every other year and to use State assessment scores, equated to the nationally normed results, in the alternate years.

Discussion: This procedure would result in pre-testing Chapter 1 students on one test and post-testing them the following year on another. Thus, it would not provide a valid basis for assessing gains the students have made.

Changes: None.

Comment: A few commenters expressed concern regarding use of other than norm-referenced tests as a basis for aggregating results of the impact of the Chapter 1 program to State and Federal levels. One commenter questioned whether procedures some States require for State-mandated tests yield valid results, particularly where States have established procedures for selection or inclusion of test results without regard to the size of standard error or other considerations of validity. Another commenter questioned whether inclusion of a large number of State competency tests—even if equated with a norm-referenced test—would produce valid results.

Discussion: The provisions in §§ 200.82(b)(2) and 200.83 are designed to provide flexibility to State and local officials in the matter of testing, reduce the amount of testing required for Chapter 1 to a minimum, and still provide valid results that can be expressed in the common reporting scale. Review by the Secretary of alternative procedures will be directed at ensuring the standards in § 200.83(b) are met.

Changes: None.

Comment: One commenter objected to the provision that alternative procedures for evaluation be subject to approval by the Secretary. Rather, the commenter stated that § 200.83(b) contains adequate guidelines and recommended that the SEA, which is closer to the local situation, have approval authority. The commenter also stated that assessment of the impact of Chapter 1 on the regular program would be discouraged if such assessment procedures were subject to Federal approval.

Discussion: The alternative procedures in § 200.83 apply only to measures to be aggregated to State and Federal levels, and do not apply to local or State efforts to assess the impact of Chapter 1 on student performance in the regular program. Because data must be aggregated to national totals and must produce results that can be expressed in the common reporting scale established by the Secretary, the Secretary must determine that alternative procedures meet the requirements in § 200.83(b). The Secretary does not intend this procedure to inhibit use of other than nationally normed tests; rather, it is to ensure data reported to the Congress by the Secretary meet certain standards.

Changes: None.

Comment: One commenter stated that the proposed alternative procedures in § 200.83 would only allow procedures that result in a number score that can be converted to the common reporting scale. The commenter felt that this restriction was not consistent with the spirit of the Act.

Discussion: Alternative procedures must produce results that can be aggregated with those produced by nationally normed tests. The Secretary does not intend to exclude any procedure that accomplishes this goal and meets the other standards in § 200.83(b).

Changes: None.

Section 200.84 How Does an LEA Report the Results of Student Achievement to the SEA?

Comment: One commenter asked if the term "common reporting scale" in § 200.84(a)(1)(i) refers to TIERS and, if so, suggested the regulations specifically refer to TIERS to make clear the requirement. Another commenter asked if the term refers to the NCE scale.

Discussion: The common reporting scale currently used to collect aggregate data is the NCE scale, which was also used in TIERS. During regulation development, especially in the negotiated rulemaking process, the Department concurred with recommendations from State and local representatives that the Chapter 1 regulations regarding evaluation should not contain the details included in TIERS. Rather, that kind of specific information would be provided in the Chapter 1 policy manual as guidance. Further, the Secretary is investigating and will continue to investigate other methods of evaluation that can provide measures capable of aggregation. Because the term "common reporting scale" is more general than "NCE" or "TIERS," it would continue to be appropriate if a better means of gathering and aggregating results is found.

Changes: None.

Section 200.86 What Requirements Govern an SEA Sampling Plan?

Comment: One commenter objected to the requirement that the sampling plan be submitted to the Secretary for approval, suggesting that the SEA should have the plan available for review by the Department. The commenter stated the requirement would be burdensome and would constitute a change from past practice.

Discussion: The requirement that the Secretary establish national standards for evaluation requires attention to the issue of sampling. Rather than specifying in regulations procedures to be used, the Secretary has left to the States the flexibility to design sampling systems most appropriate for them. The Secretary will then review and approve plans that provide reliable and representative data. The requirement for approval by the Secretary was contained in the regulations governing the initial establishment of TIERS. (See 46 FR 5189, Jan. 19, 1981, § 200.176(b)(2).) Hence, the current requirement is consistent with past practice.

Changes: None.

Section 200.87 How Does an SEA Aggregate LEA Student Achievement Data for Inclusion in Its Evaluation?

Comment: Two commenters objected to the provision in § 200.87(a)(4)(i) requiring inclusion of data on the number of students excluded from the evaluation because of missing or erroneous data. One commenter claimed the requirement was unneeded, because the data would be available from the State performance report.

Discussion: Section 200.87(a)(4) is part of the national standards for evaluation that the Secretary is required to set, and necessary for SEAs and the Department to assess the validity of the data collected.

Changes: None.

Section 200.88 For What Evaluation Activities May an LEA or SEA Use Funds Available Under This Part?

Comment: One commenter objected to the statement in § 200.88(c)(3) that Chapter 1 funds may be used for "[t]esting an appropriate number of children no longer receiving Chapter 1 services," contending the provision is vague.

Discussion: As noted in a response to comments on § 200.35, the Conference Report accompanying the Act makes clear Congress' intent that, in measuring sustained gains, sampling procedures may be used. The word "appropriate" is used to indicate that not all children need be followed—only the number

necessary to make a determination for the population.

Changes: None.

Section 200.89 For What Evaluation Activities May an LEA or SEA Not Use Funds Available Under This Part?

Comment: One commenter stated that the prohibitions in § 200.89 (b)–(c) against using Chapter 1 funds for test development activities and establishment of State and local norms appear to conflict with the provision in § 200.82(b)(2), which allows LEAs to use other than nationally normed tests provided the results of the test can be equated with scores of nationally normed tests.

Discussion: The Secretary does not believe these two provisions are incompatible. If LEAs choose to use tests that are not nationally normed to meet the standards in Subpart H, the Secretary assumes these are tests that State and local agencies have developed for their own general purposes. Sections 200.89 (b)–(c) prohibit the use of Chapter 1 funds for developing or norming such tests. However, as indicated in § 200.88(c)(2), Chapter 1 funds may be used to equate these tests to nationally normed tests to meet the standards in Subpart H. Moreover, the Secretary is aware that an LEA may wish to develop measures to assess the impact of Chapter 1, such as those created by the Chapter 1 teacher for use in the Chapter 1 project. The Secretary does not intend the prohibition in § 200.89(c) to apply in these circumstances.

Changes: A change has been made to clarify that § 200.89 applies to test development related to data to be aggregated at State and national levels.

Cooperation With Audits—EDGAR (§§ 75.910 and 76.910)

Comment: Six commenters expressed opposition to the changes proposed by these sections. Several commenters believed that the Department lacks legal authority to issue such a regulation, particularly as it was interpreted under the "**SUPPLEMENTARY INFORMATION**" heading explaining the proposed changes. Some of the commenters maintained that requiring that audit interviews be tape recorded or be attended by a third party designated by the auditee does not unreasonably restrict auditor access to auditee personnel. A third argument was that the proposed changes, by giving unilateral authority to the Inspector General to determine what is reasonable access, could lead to abuse by "overzealous" Federal auditors. The final issue raised was that a grantee had no assurance of an accurate record of an audit interview without tape recording or requiring the presence of a third person.

Discussion: The cited portions of the Inspector General Act, together with the Secretary's general authority to issue regulations and to require grantees to maintain records, authorize the Secretary to issue regulations requiring reasonable access to auditee personnel. The Inspector General's authority to examine records is meaningless if the Inspector General's auditors cannot require oral explanations of those records. Furthermore, the Inspector General Act gives Federal auditors considerable professional discretion as to methods for obtaining necessary information. Section 4(b)(1) of the Inspector General Act requires that audits be conducted in accordance with standards established by the U.S. Comptroller General as set forth in "Government Auditing Standards" (the "Yellow Book"), 1988 revision, effective January 1989. The newly revised Yellow Book specifies that "auditors choose and conduct auditing tests and procedures that, in their professional judgments, are appropriate in the circumstances to achieve the audit objectives" (page 4–1) as well as "determining the nature, timing, and content of audit steps and procedures to test for compliance * * *" (page 4–2). The Yellow Book also states (page 3–17) that "denial by the audited entity of the opportunity to meet with officials and employees of the organization, program or activity under audit" is an unacceptable scope impairment. Auditors must obtain "sufficient, competent and relevant evidence" to afford a reasonable basis for their judgments and conclusions (page 3–11). The standards provide that "testimonial evidence obtained under conditions where persons may speak freely is more credible than testimonial evidence obtained under compromising conditions (e.g., where the persons may be intimidated)" (page 6–18).

The regulations clarify what interview conditions imposed by auditees would not only impair the independence of the auditor but would diminish the interview's use as sufficient, competent, and relevant audit evidence. The Inspector General has determined that restrictions on auditor access to personnel such as tape recording or requiring third party presence at an interview amount to denial of access because of the intimidating influence of such restrictions on an individual who might risk (or believe that he would risk) his employment or future work relationships by making statements exposing the auditee to criticism, financial recovery action, or other Federal administrative sanction. Some commenters suggested that the Inspector General's "Hotline," the subpoena authority, and the statutory duty to report lack of cooperation to the "head of the establishment" (defined in the Inspector General Act as the Secretary of Education (5 U.S.C. Appendix 3, section 11(1)), are the exclusive recourse the Inspector General has for dealing with denial of access to auditee personnel. However, "Hotline" contacts, especially from anonymous callers, are not a feasible substitute for explaining to an auditor face-to-face the contents of detailed financial records or the policies and procedures, e.g., internal controls, surrounding the administration of a grant. The Inspector General's subpoena power is limited to documentary evidence and thus in any event would not address the problem of access to personnel.

As far as dealing with the issue raised that a grantee had no assurance of an accurate record of an audit interview without tape recording or requiring the presence of a third person, the Secretary does not believe this is a valid argument for the reasons stated more fully under the heading "**SUPPLEMENTARY INFORMATION**" in the preamble to the proposed regulations. Auditors are instructed to follow procedures designed to ensure an accurate record. Written summaries of interviews can be shared with the auditee, the only exception being whistle-blowing disclosures. Most importantly, the procedures do not permit an adverse finding to be based on anonymously supplied information This information is useful only as a "lead" enabling the auditor to obtain objective information that would be cited in the audit report and that would be available to the audited agency. These procedures should obviate any concern about "overzealous" auditors; the Inspector General's objective as well as the grantee's is to ensure an accurate record of audit proceedings.

Changes: The legal citations for these sections have been corrected by designating the general United States Code reference to the Inspector General Act of 1978 as 5 U.S.C. Appendix 3, and by citing additional sections of the Inspector General Act, i.e., sections 4(b)(1)(A) and 6(a)(1) (5 U.S.C. Appendix 3, sections 4(b)(1)(A) and 6(a)(1)). No other change has been made.

[FR Doc. 89–11807 Filed 5–18–18–89 8:45am]

BILLING CODE 4000–01–M

federal register

Friday
May 19, 1989

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

Section 8 Housing Assistance Payments Program—Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program; Proposed Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-89-1966; FR-2632]

Section 8 Housing Assistance Payments Program—Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed Notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) periodically, but not less frequently than annually, to be effective October 1 of each year. The Department's regulations at 24 CFR Part 888 provide a notice and comment process for developing Fair Market Rents. Today's document proposes the Fair Market Rents for FY–1990. The proposal would amend Fair Market Rent schedules for the Section 8 Existing Housing Certificate Program (Part 882, Subparts A and B), including space rentals by owners of manufactured homes under the Section 8 Existing Housing Certificate Program (Part 882, Subpart F); the Section 8 Moderate Rehabilitation Program (Part 882, Subparts D and E); and Section 8 existing housing assisted under Part 886, Subparts A and C (Section 8 loan management and property disposition programs). In addition, FMRs are used to determine payment standard schedules in the Housing Voucher Program.

DATE: Comments are due on or before July 18, 1989.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Each comment should include the commenter's name and address and must refer to the docket number indicated in the heading of this Notice. To expedite processing, each commenter is requested to simultaneously submit a copy of its comments to the Economic and Market Analysis Staff in the appropriate HUD Field Office. A copy of each comment submitted to the Rules Docket Clerk will be available for public inspection during regular business hours (7:30 am to 5:30 pm) at the above address.

FOR FURTHER INFORMATION CONTACT: Cecelia D. Livingston, Housing Voucher Division, Office of Elderly and Assisted Housing, telephone (202) 755–6477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 755–5577. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) (or payment standards based on FMRs in the Housing Voucher Program) established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

The FMRs proposed in this Notice govern the following Section 8 Housing Assistance Payments Programs: the Section 8 Existing Housing Certificate Program under Part 882 (Subparts A and B), including space rentals by owners of manufactured homes (Subpart F), the Moderate Rehabilitation Program under Part 882 (Subparts D and E), the Section 8 Housing Assistance Program for Projects with HUD-insured or HUD-held Mortgages under Part 886 (Subpart A), as well as for existing housing under the Section 8 Housing Assistance Program for the Disposition without Substantial Rehabilitation of HUD-owned Projects under Part 886 (Subpart C). In addition, FMRs are used to establish payment standards for the Housing Voucher Program.

II. Procedures for the Development of FMRs

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. The Department's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment, analyzing the public comment, and publishing final FMRs. (See 24 CFR 888.115.) Final FY–1990 FMRs will be published on or before October 1, 1989, as required by section 8(c)(1) of the Act.

III. Fair Market Rent Schedules

This document proposes revised Fair Market Rents, which reflect estimated rent levels as of April 1, 1990. Schedules at the end of this document list the FMR levels for Existing Housing (Schedule B) and Manufactured Home Spaces in the Section 8 Existing Housing Certificate Program (Schedule D). FMRs for the Moderate Rehabilitation Program are 120 percent of the Schedule B Existing Housing Fair Market Rents (see 24 CFR 882.408(a) and 888.113(e)(1)). The FMR for a Single Room Occupancy (SRO) unit in the Section 8 Existing Housing Certificate Program is 75 percent of the zero-bedroom FMR listed in Schedule B. The FMR for an SRO unit in the Moderate Rehabilitation program is 75 percent of the Moderate Rehabilitation FMR for zero-bedroom unit. The payment standard amount for an SRO unit in the Housing Voucher Program is 75 percent of the zero-bedroom FMR listed in Schedule B or the HUD approved community-wide exception rent.

IV. Method Used to Develop FMRs

The criteria used by HUD in developing the FMRs are: (1) The 45th percentile rent (that is, the rent below which 45 percent of the standard quality rental housing units are distributed); (2) Rents based on units occupied by recent movers (households who moved within two years before the date of the survey data used in these calculations); and (3) Exclusion from the data base of public housing units and recently completed housing (units built within two years of the survey dates). (See 24 CFR 888.113.)

In establishing the proposed FMRs, HUD uses the most accurate data available. Data used to compute the FY–1990 FMRs include the 1980 Census data, post-1980 American Housing Survey (AHS) data and reliable area specific data submitted by public commenters.

The proposed FMRs were calculated by updating last year's final FMRs one additional year to April 1, 1990 based on the most recent CPI data available on average annual changes for rents and for utilities. The FMRs have been calculated for each Primary Metropolitan Statistical Area (PMSA), Metropolitan Statistical Area (MSA), and nonmetropolitan county.

This year's proposed FMRs incorporate the results of the 1985 and 1986 metropolitan area AHSs. Based on a case-by-case analysis of these

surveys, HUD is proposing to modify the base FMRs for some areas.

The Department is proposing to decrease the FMRs for six areas: Beaver County, PA PMSA; Boston, MA PMSA; Detroit, MI PMSA; New Orleans, LA MSA; Oakland, CA PMSA; Pittsburgh, PA PMSA.

Three AHS areas have proposed FMRs with smaller increases than would have been made using only the CPI adjustments: Phoenix, AZ MSA; Portland, OR PMSA; Washington, DC-MD-VA PMSA.

Eight AHS areas have proposed FMR increases that are larger than the CPI increases: Cincinnati, OH-KY-IN PMSA; Dallas, TX PMSA; Fort Lauderdale-Hollywood-Pompano Breach, FL PMSA; Fort Worth, TX PMSA; Miami-Hialeah, FL PMSA; Philadelphia, PA-NJ PMSA; San Antonio, TX MSA; Tampa-St. Petersburg-Clearwater, FL MSA.

The FMRs for the Houston, Galveston-Texas City, and Brazoria, TX PMSAs and for the State of Alaska are again being proposed for decreases as the result of further declines in their CPI surveys. The proposed FMRs for the Denver and Boulder, CO PMSAs reflect decreases that are the combined result of a downward adjustment indicated by the most recent AHS data and the decrease in the local CPI. The local CPI for the Dallas and Fort Worth, TX PMSAs also continued to decline in the past year, but, as indicated above, the proposed FMRs have been increased to reflect an adjustment in the base rent required by the new AHS data.

Decreases are being proposed for the FMRs in the Richland-Kennewick-Pasco MSA and Cowlitz County FMR areas in the State of Washington, and in the Columbia, Missouri MSA, based on the results of local rental surveys that were conducted under the direction of the HUD Regional Office in response to concerns that the current FMRs for these areas were too high.

The FMRs for the Salem-Gloucester, MA PMSA remain unchanged, based on the Department's evaluation of the most recent CPI and AHS data which suggest that the current FMRs, including previously approved modifications resulting from public comments, are appropriate.

This year's proposed FMRs for manufactured home spaces were calculated by updating last year's FMRs to April 1, 1990, using the most current average annual change in the CPI residential rent index (with heating costs included in the rent factored out). As a result of decreases in the CPI, FMRs for the following areas are proposed for decrease: Denver, CO PMSA; Boulder-Longmont, CO PMSA; Dallas, TX PMSA; Fort Worth-Arlington, TX PMSA; Houston, TX PMSA; Galveston-Texas City, TX PMSA; Brazoria, TX PMSA; and all areas in the State of Alaska.

V. Request for Comments

The Department seeks public comment on FMR levels for specific areas. Comments on FMR levels must include sufficient information (including local data and a full description of the methodology used) to justify any proposed changes. Changes may be proposed in all or any of the unit sizes on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire market area (Metropolitan Statistical Area, Primary Metropolitan Statistical Area, or nonmetropolitan county).

Local rental market surveys must show the 45th percentile rent levels. To be representative, the local data must exclude units built within the last two years of the survey, should include only standard quality rental housing units, should not be drawn solely from vacant units, and should approximate the same proportion of units by structure type (for example, highrise or single family detached) and date of construction as exists in the total local inventory. Since the Department's data base includes only recent movers, where possible, commenters may wish to submit surveys based only on recent movers.

Local rental market surveys may be conducted to cover all bedroom sizes, or only selected bedroom sizes. Surveys that cover only two-bedroom units are acceptable if rent proposals for other size units are consistent with established HUD differentials by bedroom size, or if other pertinent data are supplied to support the proposals for other size units. When three- and four-bedroom units are surveyed, the following procedure must be used to determine appropriate FMR proposals: (1) Determine the 45th percentile rents for the three- and four-bedroom units surveyed, (2) multiply the 45th percentile three-bedroom rent by 1.087 to determine the three-bedroom FMR, and (3) multiply the four-bedroom rent by 1.077 to determine the four-bedroom FMR. The use of these factors will produce the same upward adjustments in the rent differentials by bedroom size as those applied to the rent differentials for three- and four-bedroom units in the HUD methodology.

VI. Other Matters

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the statutorily required establishment and review of fair market rents is categorically excluded from the Department's National Environment Policy Act procedures under 24 CFR 50.20(1).

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this Notice does not have a significant economic impact on a substantial number of small entities, because FMRs reflect the rents for similar quality units in the area. Therefore, FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

This document does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued on February 17, 1981. Analysis of the document indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (Section 8).

Accordingly, the Fair Market Rent Schedules are proposed to be amended as follows:

Date: May 12, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Section 8 Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program Schedules B & D—General Explanatory Notes

1. Geographic Coverage

a. FMRs for Existing Housing (Schedule B) are established for all Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties, and county equivalents in the United States, District of Columbia, Puerto Rico, the Virgin Islands, and Guam. FMRs also are established for nonmetropolitan parts of counties in the New England states.

b. FMRs for Manufactured Home spaces in the Section 8 Certificate Program (Schedule D) are established for all MSAs, PMSAs, selected nonmetropolitan counties, and the residual nonmetropolitan portion of each State.

c. The current 338 MSAs and PMSAs are those established by the Office of Management and Budget effective October 18, 1986.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedules B and D are listed alphabetically by MSA–PMSA and nonmetropolitan county within each State.

b. The constituent counties (and New England towns and cities) included in each MSA and PMSA are listed immediately following the listings of the FMR dollar amounts. All of the constituent parts of an MSA that are in more than one State can be identified by consulted the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

BILLING CODE 4210-27-M

A L A B A M A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anniston, AL MSA	237	287	337	424	474	Calhoun
Birmingham, AL MSA	265	322	378	475	531	Blount, Jefferson, St Clair, Shelby, Walker
Columbus, GA-AL MSA	245	295	349	437	492	Russell
Decatur, AL MSA	242	294	347	434	486	Lawrence, Morgan
Dothan, AL MSA	277	334	394	493	552	Dale, Houston
Florence, AL MSA	250	305	361	447	501	Colbert, Lauderdale
Gadsden, AL MSA	217	264	313	391	438	Etowah
Huntsville, AL MSA	279	337	397	498	557	Madison
Mobile, AL MSA	288	349	410	514	577	Baldwin, Mobile
Montgomery, AL MSA	254	310	365	457	512	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	267	325	383	478	537	Tuscaloosa

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barbour	200	243	287	359	402
Bullock	204	248	292	366	409
Chambers	198	241	284	356	397
Chilton	194	237	280	349	390
Clarke	217	264	313	391	438
Cleburne	198	241	284	356	397
Conecuh	217	264	313	391	438
Covington	200	243	287	359	402
Cullman	242	294	347	434	486
De Kalb	229	278	326	407	458
Fayette	194	237	280	349	390
Geneva	200	243	287	359	402
Hale	194	237	280	349	390
Jackson	229	278	326	407	458
Lee	248	301	356	445	499
Lowndes	204	248	292	366	409
Marengo	217	264	313	391	438
Marshall	213	259	304	378	423
Perry	217	264	313	391	438
Pike	217	263	312	389	436
Sumter	217	264	313	391	438
Tallapoosa	198	241	284	356	397
Wilcox	217	264	313	391	438

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bibb	194	237	280	349	390
Butler	208	252	297	372	417
Cherokee	198	241	284	356	397
Choctan	217	264	313	391	438
Clay	198	241	284	356	397
Coffee	271	328	386	483	541
Coosa	198	241	284	356	397
Crenshaw	204	248	292	366	409
Dallas	217	264	313	391	438
Escambia	184	225	262	330	369
Franklin	194	236	278	347	388
Greene	194	237	280	349	390
Henry	200	243	287	359	402
Lamar	194	237	280	349	390
Limestone	205	250	295	369	413
Macon	217	263	312	389	436
Marion	194	236	278	347	388
Monroe	217	264	313	391	438
Pickens	194	237	280	349	390
Randolph	198	241	284	356	397
Talladega	198	241	284	356	397
Washington	217	264	313	391	438
Winston	194	236	278	347	388

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A S K A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anchorage, AK MSA	382	465	547	684	766	Anchorage

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aleutian I	454	551	649	812	909	Bethel	454	551	649	812	909
Bristol Bay	454	551	649	812	909	Dillingham	454	551	649	812	909
Fairbanks No. Star	373	454	534	668	749	Haines	454	551	649	812	909
Juneau	454	551	649	812	909	Kenai-Penin	373	454	534	668	749
Ketchikan Gateway	454	551	649	812	909	Kobuk	454	551	649	812	909
Kodiak Island	454	551	649	812	909	Matanuska-Susitna	373	454	534	668	749
Nome	454	551	649	812	909	North Slope	454	551	649	812	909
Pr Wales-Outer Ket	454	551	649	812	909	Sitka	454	551	649	812	909
Skgwy-Ykutt-Angoon	454	551	649	812	909	Southeastfairbanks	373	454	534	668	749
Valdez-Cordova	373	454	534	668	749	Wade Hampton	454	551	649	812	909
Wrangellpetersburg	454	551	649	812	909	Ykn-Koykk	454	551	649	812	909

A R I Z O N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Phoenix, AZ MSA	390	474	557	697	780	Maricopa
Tucson, AZ MSA	381	464	546	683	765	Pima

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Apache	278	338	398	498	558	Cochise	284	346	405	508	570
Coconino	353	429	505	633	708	Gila	286	349	412	514	574
Graham	284	346	405	508	570	Greenlee	284	346	405	508	570
Lapaz	358	436	514	642	720	Mohave	358	436	514	642	720
Navajo	278	338	398	498	558	Pinal	286	349	412	514	574
Santa Cruz	284	346	405	508	570	Yavapai	353	429	505	633	708
Yuma	358	436	514	642	720						

A R K A N S A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Fayetteville-Springdale, AR MSA	260	315	371	464	520	Washington
Fort Smith, AR-OK MSA	251	306	361	452	506	Crawford, Sebastian
Little Rock-North Little Rock, AR MSA	300	364	428	537	601	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	291	352	414	516	577	Crittenden
Pine Bluff, AR MSA	248	303	358	448	501	Jefferson
Texarkana, TX-Texarkana, AR MSA	249	302	357	447	500	Miller

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

A R K A N S A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Arkansas	211	255	302	377	423
Baxter	239	291	344	429	482
Boone	239	291	344	429	482
Calhoun	202	248	290	364	407
Chicot	201	243	287	360	404
Clay	225	274	321	403	451
Cleveland	208	252	298	372	417
Conway	207	251	297	371	415
Cross	212	260	306	378	423
Desha	201	243	287	360	404
Franklin	187	227	268	334	374
Garland	221	270	316	396	445
Greene	225	274	321	403	451
Hotspring	221	270	316	396	445
Independence	235	286	337	421	472
Jackson	235	286	337	421	472
Lafayette	206	248	294	369	413
Lee	212	260	306	378	423
Little River	206	248	294	369	413
Madison	239	291	344	429	482
Mississippi	243	297	349	436	490
Montgomery	221	270	316	396	445
Newton	239	291	344	429	482
Perry	207	251	297	371	415
Pike	221	270	316	396	445
Polk	224	272	319	399	448
Prairie	181	220	260	325	363
St Francis	212	260	306	378	423
Searcy	239	291	344	429	482
Sharp	235	286	337	421	472
Union	202	248	290	364	407
White	235	286	337	421	472
Yell	207	251	297	371	415

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashley	201	243	287	360	404
Benton	248	301	351	432	482
Bradley	201	243	287	360	404
Carroll	239	291	344	429	482
Clark	221	270	316	396	445
Cleburne	235	286	337	421	472
Columbia	202	248	290	364	407
Craighead	264	319	376	470	528
Dallas	202	248	290	364	407
Drew	201	243	287	360	404
Fulton	235	286	337	421	472
Grant	208	252	298	372	417
Hempstead	206	248	294	369	413
Howard	206	248	294	369	413
Izard	235	286	337	421	472
Johnson	207	251	297	371	415
Lawrence	225	274	321	403	451
Lincoln	201	243	287	360	404
Logan	187	227	268	334	374
Marion	239	291	344	429	482
Monroe	181	220	260	325	363
Nevada	206	248	294	369	413
Ouachita	202	245	288	362	407
Phillips	212	260	306	378	423
Poinsett	225	274	321	403	451
Pope	207	251	297	371	415
Randolph	225	274	321	403	451
Scott	187	227	268	334	374
Sevier	206	248	294	369	413
Stone	235	286	337	421	472
Van Buren	235	286	337	421	472
Woodruff	235	286	337	421	472

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 4

C A L I F O R N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anaheim-Santa Ana, CA PMSA	578	701	826	1032	1156	Orange
Bakersfield, CA MSA	390	473	558	697	781	Kern
Chico, CA MSA	342	416	490	612	685	Butte
Fresno, CA MSA	355	433	509	636	713	Fresno
Los Angeles-Long Beach, CA PMSA	513	615	715	916	1035	Los Angeles
Merced, CA MSA	335	407	479	617	700	Merced
Modesto, CA MSA	374	454	536	671	750	Stanislaus
Oakland, CA PMSA	514	625	736	920	1030	Alameda, Contra Costa
Oxnard-Ventura, CA PMSA	493	600	706	882	989	Ventura
Redding, CA MSA	355	433	509	636	713	Shasta
Riverside-San Bernardino, CA PMSA	419	494	577	746	840	Riverside, San Bernardino
Sacramento, CA MSA	376	448	536	779	827	El Dorado, Placer, Sacramento, Yolo
Salinas-Seaside-Monterey, CA MSA	427	519	609	764	855	Monterey
San Diego, CA MSA	463	568	666	834	933	San Diego
San Francisco, CA PMSA	617	748	887	1104	1236	Marin, San Francisco, San Mateo
San Jose, CA PMSA	617	747	878	1098	1229	Santa Clara
Santa Barbara-Santa Maria-Lompoc, CA MSA	482	586	690	864	967	Santa Barbara
Santa Cruz, CA PMSA	552	670	790	987	1106	Santa Cruz
Santa Rosa-Petaluma, CA PMSA	486	589	695	869	973	Sonoma
Stockton, CA MSA	330	399	470	601	702	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	451	515	606	875	944	Napa, Solano
Visalia-Tulare-Porterville, CA MSA	331	404	475	689	754	Tulare
Yuba City, CA MSA	293	357	420	554	621	Sutter, Yuba

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alpine	390	473	558	697	781
Calaueras	390	473	558	697	781
Del Norte	355	433	509	636	713
Humboldt	367	445	525	656	736
Inyo	390	473	558	697	781
Lake	355	433	509	636	713
Madera	322	391	460	578	645
Mendocino	355	433	551	696	713
Mono	390	473	558	697	781
Plumas	326	396	466	582	654
San Luis Obispo	441	536	632	791	885
Siskiyou	326	396	466	582	654
Trinity	355	433	509	636	713

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Amador	390	473	558	697	781
Colusa	294	358	422	530	594
Glenn	294	358	422	530	594
Imperial	370	449	529	661	740
Kings	322	391	460	575	645
Lassen	326	396	466	582	654
Mariposa	390	473	558	697	781
Modoc	326	396	466	582	654
Nevada	437	532	625	782	875
San Benito	322	391	493	633	710
Sierra	437	532	625	782	875
Tehama	326	396	466	582	654
Tuolumne	390	473	558	697	781

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

COLORADO

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Boulder-Longmont, CO PMSA	361	439	517	646	724	Boulder
Colorado Springs, CO MSA	317	384	453	567	635	El Paso
Denver, CO PMSA	334	406	478	597	669	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	364	444	521	652	731	Larimer
Greeley, CO MSA	316	383	451	565	633	Weld
Pueblo, CO MSA	315	381	449	562	631	Pueblo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alamosa	315	381	449	562	631
Baca	274	331	384	481	540
Chaffee	349	423	497	623	698
Clear Creek	349	423	497	623	698
Costilla	315	381	449	562	631
Custer	349	423	497	623	698
Delores	315	381	449	562	631
Elbert	269	327	384	481	540
Garfield	395	480	566	708	792
Grand	416	503	592	741	831
Hinsdale	416	503	592	741	831
Jackson	416	503	592	741	831
Kit Carson	269	327	384	481	540
La Plata	350	420	495	618	694
Lincoln	274	331	384	481	540
Mesa	395	480	566	708	792
Moffat	395	480	566	708	792
Montrose	416	503	592	741	831
Otero	274	331	384	481	540
Park	349	423	497	623	698
Pitkin	416	503	592	741	831
Rio Blanco	395	480	566	708	792
Routt	416	503	592	741	831
San Juan	315	381	449	562	631
Sedgwick	269	327	384	481	540
Teller	349	423	497	623	698
Yuma	269	327	384	481	540

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Archuleta	315	381	449	562	631
Bent	274	331	384	481	540
Cheyenne	269	327	384	481	540
Conejos	315	381	449	562	631
Crowley	274	331	384	481	540
Delta	416	503	592	741	831
Eagle	416	503	592	741	831
Fremont	349	423	497	623	698
Gilpin	349	423	497	623	698
Gunnison	416	503	592	741	831
Huerfano	315	381	449	562	631
Kiowa	274	331	384	481	540
Lake	349	423	497	623	698
Las Animas	315	381	449	562	631
Logan	269	327	384	481	540
Mineral	315	381	449	562	631
Montezuma	315	381	449	562	631
Morgan	269	327	384	481	540
Ouray	416	503	592	741	831
Phillips	269	327	384	481	540
Prowers	274	331	384	481	540
Rio Grande	315	381	449	562	631
Saguache	315	381	449	562	631
San Miguel	416	503	592	741	831
Summit	416	503	592	741	831
Washington	269	327	384	481	540

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

CONNECTICUT

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Bridgeport-Milford, CT PMSA	443	539	636	793	890	Fairfield county towns of Bridgeport, Easton, Fairfield Monroe, Shelton, Stratford, Trumbull New Haven county towns of Ansonia, Beacon Falls, Derby Milford, Oxford, Seymour
Bristol, CT PMSA	368	447	527	659	739	Hartford county towns of Bristol, Burlington Litchfield county towns of Plymouth
Danbury, CT PMSA	480	585	688	861	965	Fairfield county towns of Bethel, Brookfield, Danbury New Fairfield, Newtown, Redding, Ridgefield, Sherman Litchfield county towns of Bridgewater, New Milford
Hartford, CT PMSA	443	540	631	796	887	Hartford county towns of Avon, Bloomfield, Canton East Granby, East Hartford, East Windsor, Enfield Farmington, Glastonbury, Granby, Hartford, Manchester Marlborough, Newington, Rocky Hill, Simsbury South Windsor, Suffield, West Hartford, Wethersfield Windsor, Windsor Locks Litchfield county towns of Barkhamsted, New Hartford Middlesex county towns of East Haddam New London county towns of Colchester Tolland county towns of Andover, Bolton, Columbia Coventry, Ellington, Hebron, Somers, Stafford, Tolland Vernon, Willington
Middletown, CT PMSA	373	454	535	670	750	Middlesex county towns of Cromwell, Durham, East Hampton Haddam, Middlefield, Middletown, Portland
New Britain, CT PMSA	395	479	564	706	792	Hartford county towns of Berlin, New Britain, Plainville Southington
New Haven-Meriden, CT MSA	477	581	684	856	958	Middlesex county towns of Clinton, Killingworth New Haven county towns of Bethany, Branford, Cheshire East Haven, Guilford, Hamden, Madison, Meriden New Haven, North Branford, North Haven, Orange Wallingford, West Haven, Woodbridge
New London-Norwich, CT-RI MSA	424	516	606	758	850	New London county towns of Bozrah, East Lyme, Franklin Griswold, Groton, Ledyard, Lisbon, Montville, New London North Stonington, Norwich, Old Lyme, Preston, Salem Sprague, Stonington, Waterford Windham county towns of Canterbury
Norwalk, CT PMSA	511	621	731	914	1025	Fairfield county towns of Norwalk, Weston, Westport Wilton
Stamford, CT PMSA	617	749	882	1103	1235	Fairfield county towns of Darien, Greenwich, New Canaan Stamford
Waterbury, CT MSA	384	466	549	686	769	Litchfield county towns of Bethlehem, Thomaston Watertown, Woodbury New Haven county towns of Middlebury, Naugatuck, Prospect Southbury, Waterbury, Wolcott

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CONNECTICUT continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	368	447	527	659	739	Hartland
Litchfield	408	495	582	729	817	Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent Litchfield, Morris, Norfolk, North Canaan, Roxbury Salisbury, Sharon, Torrington, Warren, Washington Winchester
Middlesex	457	554	652	816	913	Chester, Deep River, Essex, Old Saybrook, Westbrook
New London	326	398	468	586	657	Lebanon, Lyme, Voluntown
Tolland	442	537	631	791	886	Mansfield, Union
Windham	390	474	559	699	783	Ashford, Brooklyn, Chaplin, Eastford, Hampton, Killingly Plainfield, Pomfret, Putnam, Scotland, Sterling Thompson, Windham, Woodstock

DELAWARE

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Wilmington, DE-NJ-MD PMSA	397	475	565	707	840	New Castle

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Kent	325	394	464	580	650
Sussex	325	394	464	580	650

DIST. OF COLUMBIA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Washington, DC-MD-VA MSA	486	591	695	869	973	Washington

FLORIDA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bradenton, FL MSA	349	425	501	626	701	Manatee
Daytona Beach, FL MSA	338	410	482	604	677	Volusia
Fort Lauderdale-Hollywood-Pompano Beach, FL PMSA	415	504	593	742	830	Broward
Fort Myers-Cape Coral, FL MSA	360	436	513	643	721	Lee
Fort Pierce, FL MSA	360	436	513	643	721	Martin, St Lucie
Fort Walton Beach, FL MSA	240	291	342	429	480	Okaloosa
Gainesville, FL MSA	304	370	435	545	609	Alachua, Bradford
Jacksonville, FL MSA	318	386	456	569	639	Clay, Duval, Nassau, St Johns
Lakeland-Winter Haven, FL MSA	286	349	411	514	576	Polk
Melbourne-Titusville-Palm Bay, FL MSA	329	394	465	582	652	Brevard
Miami-Hialeah, FL PMSA	396	482	568	709	794	Dade
Naples, FL MSA	369	447	527	660	739	Collier

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

F L O R I D A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Ocala, FL MSA	265	323	379	474	531	Marion
Orlando, FL MSA	351	428	503	612	684	Orange, Osceola, Seminole
Panama City, FL MSA	254	310	366	458	511	Bay
Pensacola, FL MSA	284	347	408	510	571	Escambia, Santa Rosa
Sarasota, FL MSA	378	460	542	676	759	Sarasota
Tallahassee, FL MSA	300	364	429	537	600	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	342	416	490	611	685	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton-Delray Beach, FL MSA.	367	438	510	624	687	Palm Beach

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Baker	232	280	330	413	464
Charlotte	347	423	498	621	697
Columbia	238	289	339	425	476
Dixie	212	260	306	382	429
Franklin	196	238	279	350	392
Glades	347	423	498	621	697
Hamilton	212	260	306	382	429
Hendry	347	423	498	621	697
Holmes	228	276	326	408	457
Jackson	204	247	291	365	409
Lafayette	212	260	306	382	429
Levy	265	323	379	474	531
Madison	212	260	306	382	429
Okeechobee	249	303	357	446	501
Sumter	265	321	379	474	531
Taylor	212	260	306	382	429
Wakulla	226	274	323	405	452
Washington	228	278	327	410	458

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Calhoun	196	238	279	350	392
Citrus	265	321	379	474	531
De Soto	249	303	357	446	501
Flagler	268	324	382	478	537
Gilchrist	212	260	306	382	429
Gulf	196	238	279	350	392
Hardee	249	303	357	446	501
Highlands	249	303	357	446	501
Indian River	360	436	513	643	721
Jefferson	196	238	279	350	392
Lake	279	339	398	500	560
Liberty	196	238	279	350	392
Monroe	408	495	655	783	851
Putnam	268	324	382	478	537
Suwannee	212	260	306	382	429
Union	212	260	306	382	429
Walton	267	323	381	477	535

G E O R G I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albany, GA MSA	263	318	376	471	527	Dougherty, Lee
Athens, GA MSA	272	332	390	487	546	Clarke, Jackson, Madison, Oconee
Atlanta, GA MSA	379	460	540	675	755	Barrow, Butts, Cherokee, Clayton, Cobb, Coweta, De Kalb Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry Newton, Paulding, Rockdale, Spalding, Walton
Augusta, GA-SC MSA	277	334	390	487	546	Columbia, Mcduffie, Richmond
Chattanooga, TN-GA MSA	295	359	422	528	593	Catoosa, Dade, Walker
Columbus, GA-AL MSA	245	295	349	437	492	Chattahoochee, Columbus

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G E O R G I A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Macon-Warner Robins, GA MSA	273	334	394	492	548	Bibb, Houston, Jones, Peach
Savannah, GA MSA	277	337	397	496	556	Chatham, Effingham

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Appling	227	276	326	407	456
Bacon	213	259	304	381	428
Baldwin	216	263	309	387	434
Barton	230	280	331	413	464
Berrien	225	273	321	403	450
Brantley	213	259	304	381	428
Bryan	262	304	360	449	504
Burke	217	264	310	390	436
Camden	251	304	360	449	504
Carroll	262	316	372	466	520
Chattooga	230	280	331	413	464
Clinch	213	259	304	381	428
Colquitt	219	267	313	392	439
Crawford	184	224	263	330	368
Dawson	207	255	297	369	410
Dodge	221	270	313	393	434
Early	221	270	313	393	439
Elbert	209	254	299	375	420
Evans	227	276	326	407	456
Floyd	230	280	331	413	464
Gilmer	246	299	351	440	494
Glynn	251	304	360	449	504
Grady	221	270	313	393	439
Habersham	229	278	329	410	460
Hancock	221	270	313	393	434
Harris	224	273	316	394	439
Heard	243	296	348	436	488
Jasper	221	270	313	393	434
Jefferson	217	264	310	390	436
Johnson	221	270	313	393	434
Lanier	225	273	321	403	450
Liberty	251	304	360	449	504
Long	251	304	360	449	504
Lumpkin	207	255	297	369	410
Macon	221	270	313	393	439
Meriwether	243	296	348	436	488

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Atkinson	213	259	304	381	428
Baker	221	270	313	393	439
Banks	204	249	293	366	410
Ben Hill	225	273	321	403	450
Bleckley	221	270	313	393	434
Brooks	225	273	321	403	450
Bulloch	227	276	326	407	456
Calhoun	221	270	313	393	439
Candler	227	276	326	407	456
Charlton	221	269	313	386	428
Clay	221	270	313	393	439
Coffee	213	259	304	381	428
Cook	225	273	321	403	450
Crisp	219	267	313	392	439
Decatur	221	270	313	393	439
Dooly	221	270	313	393	439
Echols	225	273	321	403	450
Emanuel	217	264	310	390	436
Fannin	246	299	351	440	494
Franklin	204	249	293	366	410
Glascock	217	264	310	390	436
Gordon	230	280	331	413	464
Greene	207	251	296	370	414
Hall	295	354	421	525	592
Haralson	230	280	331	413	464
Hart	204	249	293	366	410
Irwin	225	273	321	403	450
Jeff Davis	227	276	326	407	456
Jenkins	217	264	310	390	436
Lamar	203	246	291	364	407
Laurens	216	263	309	387	434
Lincoln	217	264	310	390	436
Lowndes	225	273	321	403	450
Mcintosh	251	304	360	449	504
Marion	224	273	316	394	439
Miller	221	270	313	393	439

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Mitchell	221	270	313	393	439
Montgomery	224	274	321	396	439
Murray	246	299	351	440	494
Pickens	246	299	351	440	494
Pike	203	246	291	364	407
Pulaski	221	270	313	393	434
Quitman	219	267	313	392	439
Randolph	221	270	313	393	439
Screven	224	274	321	396	439
Stephens	240	295	344	432	481
Sumter	245	300	354	442	497
Taliaferro	217	264	310	390	436
Taylor	221	270	313	393	439
Terrell	221	270	313	393	439
Tift	225	273	321	403	450
Towns	207	255	297	369	410
Troup	249	300	352	439	490
Twiggs	184	224	263	330	368
Upson	203	246	291	364	407
Warren	217	264	310	390	436
Wayne	227	276	326	407	456
Wheeler	221	270	313	393	434
Whitfield	246	299	351	440	494
Wilkes	217	264	310	390	436
Worth	221	270	313	393	439

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Monroe	184	224	263	330	368
Morgan	207	251	296	370	414
Oglethorpe	207	251	296	370	414
Pierce	213	259	304	381	428
Polk	230	282	331	413	464
Putnam	221	270	313	393	434
Rabun	207	255	297	369	410
Schley	224	273	316	394	439
Seminole	221	270	313	393	439
Stewart	224	273	316	394	439
Talbot	219	267	313	392	439
Tattnall	227	276	326	407	456
Telfair	221	270	313	393	434
Thomas	256	310	366	460	514
Toombs	227	276	326	407	456
Treutlen	221	270	313	393	434
Turner	225	273	321	403	450
Union	207	255	297	369	410
Ware	213	259	304	381	428
Washington	221	270	313	393	434
Webster	224	273	316	394	439
White	207	255	297	369	410
Wilcox	221	270	313	393	434
Wilkinson	221	270	313	393	434

H A W A I I

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Honolulu, HI MSA	454	552	649	817	915	Honolulu

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hawaii	435	527	619	776	869
Maui	435	527	619	776	869

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Kauai	542	659	775	969	1085

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I D A H O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Boise City, ID MSA	367	447	526	658	737	Ada

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	286	349	410	512	575
Bear Lake	297	361	425	533	597
Bingham	299	364	425	533	597
Boise	286	349	410	512	575
Bonneville	321	389	459	574	643
Butte	321	389	459	574	643
Canyon	286	349	410	512	575
Cassia	304	369	435	544	610
Clearwater	297	361	425	533	597
Elmore	286	349	410	512	575
Fremont	321	389	459	574	643
Gooding	304	369	435	544	610
Jefferson	321	389	459	574	643
Kootenai	297	361	425	533	597
Lemhi	321	389	459	574	643
Lincoln	304	369	435	544	610
Minidoka	304	369	435	544	610
Oneida	297	361	425	533	597
Payette	286	349	410	512	575
Shoshone	297	361	425	533	597
Twin Falls	304	369	435	544	610
Washington	286	349	410	512	575

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bannock	299	364	425	533	597
Benewah	297	361	425	533	597
Blaine	304	369	435	544	610
Bonner	297	361	425	533	597
Boundary	297	361	425	533	597
Camas	304	369	435	544	610
Caribou	299	364	425	533	597
Clark	321	389	459	574	643
Custer	321	389	459	574	643
Franklin	297	361	425	533	597
Gem	286	349	410	512	575
Idaho	297	361	425	533	597
Jerome	304	369	435	544	610
Latah	297	361	425	533	597
Lewis	297	361	425	533	597
Madison	321	389	459	574	643
Nez Perce	297	361	425	533	597
Owyhee	286	349	410	512	575
Power	299	364	425	533	597
Teton	321	389	459	574	643
Valley	286	349	410	512	575

I L L I N O I S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Aurora-Elgin, IL PMSA	429	523	617	770	865	Kane, Kendall
Bloomington-Normal, IL MSA	314	383	450	562	630	Mclean
Champaign-Urbana-Rantoul, IL MSA	305	370	437	548	612	Champaign
Chicago, IL PMSA	420	517	604	760	850	Cook, Du Page, Mchenry
Davenport-Rock Island-Moline, IA-IL MSA	335	407	479	598	670	Henry, Rock Island
Decatur, IL MSA	305	370	437	548	612	Macon
Joliet, IL PMSA	433	527	623	778	874	Grundy, Will
Kankakee, IL MSA	302	366	432	540	606	Kankakee
Lake County, IL PMSA	444	540	634	796	891	Lake
Peoria, IL MSA	354	430	505	633	708	Peoria, Tazewell, Woodford

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

ILLINOIS continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rockford, IL MSA	321	391	460	574	643	Boone, Winnebago
St. Louis, MO-IL MSA	315	384	452	568	636	Clinton, Jersey, Madison, Monroe, St Clair
Springfield, IL MSA	322	392	461	576	645	Menard, Sangamon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	239	290	342	428	479	Alexander	221	268	318	396	443
Bond	262	321	376	471	528	Brown	239	290	342	428	479
Bureau	291	355	419	523	586	Calhoun	267	325	384	478	536
Carroll	270	328	388	485	542	Cass	275	329	390	482	536
Christian	277	335	395	495	555	Clark	262	321	376	471	528
Clay	247	299	354	441	496	Coles	262	321	376	471	528
Cranford	247	299	354	441	496	Cumberland	262	321	376	471	528
De Kalb	316	384	451	564	632	De Witt	262	321	376	471	528
Douglas	262	321	376	471	528	Edgar	262	321	376	471	528
Edwards	239	290	342	428	479	Effingham	247	299	354	441	496
Fayette	247	299	354	441	496	Ford	275	332	392	492	551
Franklin	280	338	400	501	561	Fulton	291	355	419	523	586
Gallatin	221	268	318	396	443	Greene	267	325	384	478	536
Hamilton	239	290	342	428	479	Hancock	256	312	366	460	516
Hardin	221	268	318	396	443	Henderson	256	312	366	460	516
Iroquois	275	332	392	492	551	Jackson	280	338	400	501	561
Jasper	247	299	354	441	496	Jefferson	269	326	389	485	540
Jo Daviess	270	328	388	485	542	Johnson	221	268	318	396	443
Knox	284	345	404	507	569	La Salle	330	401	472	592	663
Lawrence	247	299	354	441	496	Lee	330	401	472	592	663
Livingston	275	332	392	492	551	Logan	275	329	390	482	536
Mcdonough	262	320	372	464	516	Macoupin	277	335	395	495	555
Marion	247	299	354	441	496	Marshall	291	355	419	523	586
Mason	275	329	390	482	536	Massac	221	268	318	396	443
Mercer	256	312	366	460	516	Montgomery	277	335	395	495	555
Morgan	275	329	390	482	536	Moultrie	277	335	395	495	555
Ogle	270	328	388	485	542	Perry	262	321	376	471	528
Piatt	262	321	376	471	528	Pike	239	290	342	428	479
Pope	221	268	318	396	443	Pulaski	221	268	318	396	443
Putnam	291	355	419	523	586	Randolph	262	321	376	471	528
Richland	247	299	354	441	496	Saline	221	268	318	396	443
Schuyler	239	290	342	428	479	Scott	275	329	390	482	536
Shelby	277	335	395	495	555	Stark	291	355	419	523	586
Stephenson	270	328	388	485	542	Union	221	268	318	396	443
Vermilion	275	332	392	492	551	Wabash	239	290	342	428	479

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

ILLINOIS continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Warren	262	320	372	464	516
Wayne	239	290	342	428	479
Whiteside	330	401	472	592	663
Washington	262	321	376	471	528
White	239	290	342	428	479
Williamson	280	338	400	501	561

INDIANA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anderson, IN MSA	261	318	373	468	525	Madison
Bloomington, IN MSA	282	343	404	506	566	Monroe
Cincinnati, OH-KY-IN PMSA	309	376	442	552	619	Dearborn
Elkhart-Goshen, IN MSA	276	334	394	493	553	Elkhart
Evansville, IN-KY MSA	290	345	405	508	568	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	290	350	408	512	568	Allen, De Kalb, Whitley
Gary-Hammond, IN PMSA	344	417	491	615	689	Lake, Porter
Indianapolis, IN MSA	292	359	421	529	591	Boone, Hamilton, Hancock, Hendricks, Johnson, Marion Morgan, Shelby
Kokomo, IN MSA	287	351	411	516	577	Howard, Tipton
Lafayette-West Lafayette, IN MSA	304	370	435	544	610	Tippecanoe
Louisville, KY-IN MSA	263	319	374	467	523	Clark, Floyd, Harrison
Muncie, IN MSA	250	302	355	441	493	Delaware
South Bend-Mishawaka, IN MSA	284	344	401	498	555	St Joseph
Terre Haute, IN MSA	258	314	366	455	506	Clay, Vigo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	256	311	362	453	508
Benton	245	299	353	441	493
Brown	289	353	415	520	582
Cass	254	310	364	455	511
Crawford	212	258	303	381	427
Decatur	289	353	415	520	582
Fayette	249	301	353	441	493
Franklin	249	301	353	441	493
Gibson	276	334	394	493	553
Greene	239	289	343	429	480
Huntington	253	309	362	453	508
Jasper	256	312	366	459	515
Jefferson	276	334	394	493	553
Knox	245	295	343	429	480
Lagrange	263	319	375	470	527
Lawrence	266	324	382	478	534
Bartholomew	289	353	415	520	582
Blackford	232	282	332	415	466
Carroll	245	299	353	441	493
Clinton	245	299	353	441	493
Daviess	239	289	343	429	480
Dubois	212	258	303	381	427
Fountain	245	299	353	441	493
Fulton	246	298	351	442	493
Grant	232	282	332	415	466
Henry	232	282	332	415	466
Jackson	289	353	415	520	582
Jay	232	282	332	415	466
Jennings	289	353	415	520	582
Kosciusko	263	318	374	461	515
La Porte	279	339	398	498	560
Marshall	256	312	366	459	515

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

I N D I A N A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Martin	239	289	343	429	480
Montgomery	245	299	353	441	493
Noble	262	319	375	470	527
Orange	212	258	303	381	427
Parke	245	299	353	441	493
Pike	276	334	394	493	553
Putnam	267	324	381	476	535
Ripley	276	334	394	493	553
Scott	263	320	377	472	529
Starke	256	312	366	459	515
Sullivan	245	299	353	441	493
Union	249	301	353	441	493
Wabash	238	288	340	427	478
Washington	284	346	407	510	571
Wells	259	312	363	455	508

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Miami	254	310	364	455	511
Newton	256	312	366	459	515
Ohio	276	334	394	493	553
Owen	281	342	401	503	564
Perry	212	258	303	381	427
Pulaski	256	312	366	459	515
Randolph	232	282	332	415	466
Rush	245	299	353	441	493
Spencer	212	258	303	381	427
Steuben	262	319	375	470	527
Switzerland	276	334	394	493	553
Vermillion	254	309	360	448	496
Warren	245	299	353	441	493
Wayne	250	302	355	441	493
White	245	299	353	441	493

I O W A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Cedar Rapids, IA MSA	326	394	464	582	653	Linn
Davenport-Rock Island-Moline, IA-IL MSA	335	407	479	598	670	Scott
Des Moines, IA MSA	323	393	463	581	650	Dallas, Polk, Warren
Dubuque, IA MSA	301	364	429	537	601	Dubuque
Iowa City, IA MSA	341	415	488	611	684	Johnson
Omaha, NE-IA MSA	296	359	422	529	594	Pottawattamie
Sioux City, IA-NE MSA	293	356	419	524	588	Woodbury
Waterloo-Cedar Falls, IA MSA	327	395	466	584	655	Black Hawk, Bremer

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	246	300	352	442	494
Allamakee	260	315	373	466	522
Audubon	261	317	375	468	524
Boone	298	360	424	531	595
Buena Vista	256	310	366	457	514
Calhoun	261	317	375	468	524
Cass	268	326	382	479	537
Cerro Gordo	258	313	370	462	518
Chickasaw	260	315	373	466	522
Clay	256	310	366	457	514
Clinton	291	352	416	520	584

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	246	300	352	442	494
Appanoose	246	300	352	442	494
Benton	255	309	364	456	511
Buchanan	260	315	373	466	522
Butler	260	315	373	466	522
Carroll	261	317	375	468	524
Cedar	291	352	416	520	584
Cherokee	261	317	375	468	524
Clarke	246	300	352	442	494
Clayton	260	315	373	466	522
Crawford	261	317	375	468	524

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

I O W A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Davis	246	300	352	442	494
Delaware	291	352	416	520	584
Dickinson	256	310	366	457	514
Fayette	260	315	373	466	522
Franklin	258	313	370	462	518
Greene	261	317	375	468	524
Guthrie	261	317	375	468	524
Hancock	258	313	370	462	518
Harrison	268	326	382	479	537
Howard	260	315	373	466	522
Ida	261	317	375	468	524
Jackson	291	352	416	520	584
Jefferson	272	331	388	487	546
Keokuk	256	310	366	457	513
Lee	273	333	391	489	549
Lucas	246	300	352	442	494
Madison	275	336	394	493	553
Marion	275	336	394	493	553
Mills	268	326	382	479	537
Monona	261	317	375	468	524
Montgomery	268	326	382	479	537
O Brien	256	310	366	457	514
Page	268	326	382	479	537
Plymouth	261	317	375	468	524
Poweshiek	271	330	387	485	545
Sac	261	317	375	468	524
Sioux	256	310	366	457	514
Tama	271	330	387	485	545
Union	246	300	352	442	494
Wapello	291	351	415	519	582
Wayne	246	300	352	442	494
Winnebago	258	313	370	462	518
Worth	258	313	370	462	518

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Decatur	246	300	352	442	494
Des Moines	273	333	391	489	549
Emmet	256	310	366	457	514
Floyd	258	313	370	462	518
Fremont	268	326	382	479	537
Grundy	260	315	373	466	522
Hamilton	261	317	375	468	524
Hardin	271	330	387	485	545
Henry	273	333	391	489	549
Humboldt	261	317	375	468	524
Iowa	255	309	364	456	511
Jasper	275	336	394	493	553
Jones	255	309	364	456	511
Kossuth	258	313	370	462	518
Louisa	273	333	391	489	549
Lyon	256	310	366	457	514
Mahaska	246	300	352	442	494
Marshall	271	330	387	485	545
Mitchell	258	313	370	462	518
Monroe	246	300	352	442	494
Muscatine	273	333	391	489	549
Osceola	256	310	366	457	514
Palo Alto	256	310	366	457	514
Pocahontas	261	317	375	468	524
Ringgold	246	300	352	442	494
Shelby	268	326	382	479	537
Story	298	360	424	531	595
Taylor	246	300	352	442	494
Van Buren	246	300	352	442	494
Washington	255	309	364	456	511
Webster	261	317	375	468	524
Winneshiek	260	315	373	466	522
Wright	261	317	375	468	524

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Kansas City, MO-KS MSA	309	375	441	551	617	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	328	398	469	586	657	Douglas
Topeka, KS MSA	297	362	424	533	595	Shawnee
Wichita, KS MSA	316	384	457	569	634	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	207	251	296	370	416
Atchison	239	290	342	428	479
Barton	240	292	344	430	481
Brown	239	290	342	428	479
Chautauqua	207	251	296	370	416
Cheyenne	209	254	299	375	420
Clay	261	318	375	469	524
Coffey	261	318	375	469	524
Cowley	207	251	296	370	416
Decatur	209	254	299	375	420
Doniphan	239	290	342	428	479
Elk	207	251	296	370	416
Ellsworth	259	315	371	466	520
Ford	246	299	352	441	495
Geary	261	318	375	469	524
Graham	209	254	299	375	420
Gray	246	299	352	441	495
Greenwood	261	318	375	469	524
Harper	240	292	344	430	481
Hodgeman	246	299	352	441	495
Jefferson	227	276	325	405	455
Kearny	246	299	352	441	495
Kiowa	240	292	344	430	481
Lane	246	299	352	441	495
Linn	207	251	296	370	416
Lyon	261	318	375	469	524
Marion	261	318	375	469	524
Meade	246	299	352	441	495
Montgomery	219	267	314	394	441
Morton	246	299	352	441	495
Neosho	219	267	314	394	441
Norton	209	254	299	375	420
Osborne	209	254	299	375	420
Pawnee	240	292	344	430	481

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anderson	207	251	296	370	416
Barber	240	292	344	430	481
Bourbon	207	251	296	370	416
Chase	261	318	375	469	524
Cherokee	219	267	314	394	441
Clark	246	299	352	441	495
Cloud	259	315	371	466	520
Comanche	240	292	344	430	481
Crawford	219	267	314	394	441
Dickinson	261	318	375	469	524
Edwards	240	292	344	430	481
Ellis	209	254	299	375	420
Finney	246	299	352	441	495
Franklin	227	275	324	404	453
Gove	209	254	299	375	420
Grant	246	299	352	441	495
Greeley	246	299	352	441	495
Hamilton	246	299	352	441	495
Haskell	246	299	352	441	495
Jackson	239	290	342	428	479
Jewell	259	315	371	466	520
Kingman	240	292	344	430	481
Labette	219	267	314	394	441
Lincoln	259	315	371	466	520
Logan	209	254	299	375	420
Mcpherson	276	335	396	495	553
Marshall	261	318	375	469	524
Mitchell	259	315	371	466	520
Morris	261	318	375	469	524
Nemaha	239	290	342	428	479
Ness	246	299	352	441	495
Osage	227	276	325	405	455
Ottawa	259	315	371	466	520
Phillips	209	254	299	375	420

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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K A N S A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Pottawatomie	261	318	375	469	524
Rawlins	209	254	299	375	420
Republic	259	315	371	466	520
Riley	261	318	375	469	524
Rush	240	292	344	430	481
Saline	259	315	371	466	520
Seward	246	299	352	441	495
Sherman	209	254	299	375	420
Stafford	240	292	344	430	481
Stevens	246	299	352	441	495
Thomas	209	254	299	375	420
Wabaunsee	261	318	375	469	524
Washington	259	315	371	466	520
Wilson	207	251	296	370	416

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Pratt	240	292	344	430	481
Reno	276	335	396	495	553
Rice	276	335	396	495	553
Rooks	209	254	299	375	420
Russell	209	254	299	375	420
Scott	246	299	352	441	495
Sheridan	209	254	299	375	420
Smith	209	254	299	375	420
Stanton	246	299	352	441	495
Sumner	240	292	344	430	481
Trego	209	254	299	375	420
Wallace	209	254	299	375	420
Wichita	246	299	352	441	495
Woodson	207	251	296	370	416

K E N T U C K Y

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Cincinnati, OH-KY-IN PMSA	309	376	442	552	619	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	273	343	430	522	580	Christian
Evansville, IN-KY MSA	290	345	405	508	568	Henderson
Huntington-Ashland, WV-KY-OH MSA	292	354	418	523	588	Boyd, Carter, Greenup
Lexington-Fayette, KY MSA	305	371	436	547	612	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN MSA	263	319	374	467	523	Bullitt, Jefferson, Oldham, Shelby
Owensboro, KY MSA	239	290	342	427	479	Daviess

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	225	274	319	394	441
Anderson	280	342	402	502	562
Barren	239	290	343	427	481
Bell	243	297	349	436	490
Bracken	225	273	321	403	451
Breckinridge	221	270	316	396	443
Caldwell	240	292	346	432	484
Carlisle	230	279	328	411	461
Casey	220	268	315	394	441
Clinton	225	274	319	394	441
Cumberland	225	274	319	394	441
Elliott	207	251	297	371	416
Fleming	225	273	321	403	451

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	189	230	271	338	379
Ballard	230	279	328	411	461
Bath	225	273	321	403	451
Boyle	273	330	390	487	546
Breathitt	231	280	330	413	463
Butler	189	230	271	338	379
Calloway	230	279	328	411	461
Carroll	231	281	330	414	463
Clay	207	251	296	370	415
Crittendon	240	292	346	432	484
Edmonson	189	230	271	338	379
Estill	273	330	390	487	546
Floyd	244	298	350	438	492

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Franklin	280	342	402	502	562
Gallatin	231	281	330	414	463
Grant	231	281	330	414	463
Grayson	221	270	316	396	443
Hancock	233	283	334	418	467
Harlan	243	297	349	436	490
Hart	189	230	271	338	379
Hickman	230	279	328	411	461
Jackson	207	251	296	370	415
Knott	231	280	330	413	463
Larue	221	270	316	396	443
Lawrence	207	251	297	371	416
Leslie	231	280	330	413	463
Lewis	225	273	321	403	451
Livingston	208	252	298	372	417
Lyon	208	252	298	372	417
Mccreary	225	274	319	394	441
Madison	273	330	393	487	546
Marion	221	270	316	396	443
Martin	244	298	350	438	492
Meade	250	305	359	449	503
Mercer	280	342	402	502	562
Monroe	189	230	271	338	379
Morgan	225	274	321	403	451
Nelson	221	270	316	396	443
Ohio	233	283	334	418	467
Owsley	231	280	330	413	463
Perry	231	280	330	413	463
Powell	203	246	290	364	409
Robertson	225	273	321	403	451
Rowan	225	273	321	403	451
Simpson	241	294	347	434	486
Taylor	225	274	319	394	441
Trigg	208	252	298	372	417
Union	233	283	334	418	467
Washington	221	270	316	396	443
Webster	233	283	334	418	467
Wolfe	231	280	330	413	463

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Fulton	230	279	328	411	461
Garrard	273	330	390	487	546
Graves	230	279	328	411	461
Green	225	274	319	394	441
Hardin	250	305	359	449	503
Harrison	245	273	350	438	491
Henry	206	250	294	369	413
Hopkins	240	292	346	432	484
Johnson	244	298	350	438	492
Knox	213	260	305	397	427
Laurel	207	289	364	378	415
Lee	231	280	330	413	463
Letcher	231	280	330	413	463
Lincoln	273	330	390	487	546
Logan	241	294	347	434	486
Mccracken	240	282	333	411	461
Mclean	233	283	334	418	467
Magoffin	244	298	350	438	492
Marshall	240	282	333	411	461
Mason	225	273	321	403	451
Menifee	225	274	321	403	451
Metcalfe	189	230	271	338	379
Montgomery	225	273	321	403	451
Muhlenberg	240	292	346	432	484
Nicholas	203	246	290	364	409
Owen	231	281	330	414	463
Pendleton	231	281	330	414	463
Pike	244	298	350	438	492
Pulaski	225	274	319	394	441
Rockcastle	207	251	296	370	415
Russell	220	268	315	394	441
Spencer	206	250	294	369	413
Todd	208	252	298	372	417
Trimble	206	250	294	369	413
Warren	241	294	347	434	486
Wayne	225	274	319	394	441
Whitley	243	297	349	436	490

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

LOUISIANA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Alexandria, LA MSA	257	313	369	461	515	Rapides
Baton Rouge, LA MSA	324	392	462	577	647	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma-Thibodaux, LA MSA	286	347	409	511	573	Lafourche, Terrebonne
Lafayette, LA MSA	324	392	462	577	647	Lafayette, St Martin
Lake Charles, LA MSA	260	314	367	457	511	Calcasieu
Monroe, LA MSA	256	312	367	459	513	Ouachita
New Orleans, LA MSA	339	412	485	606	680	Jefferson, Orleans, St Bernard, St Charles, St John The St Tammany
Shreveport, LA MSA	291	353	418	522	585	Bossier, Caddo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Acadia	221	270	318	396	445
Assumption	192	233	273	342	384
Beauregard	176	215	254	319	356
Caldwell	201	243	287	353	395
Catahoula	218	265	314	392	439
Concordia	218	265	314	392	439
East Carroll	175	214	252	316	352
Evangeline	212	257	302	380	425
Grant	218	265	314	392	439
Iberville	184	223	262	329	369
Jefferson Davis	176	215	254	319	356
Lincoln	228	279	328	409	459
Morehouse	175	214	252	316	352
Plaquemines	322	389	459	574	642
Red River	228	279	328	409	459
Sabine	228	279	328	409	459
St James	192	233	273	342	384
St Mary	261	320	375	469	525
Tensas	175	214	252	316	352
Vermilion	221	270	318	396	445
Washington	207	252	296	371	416
West Carroll	175	214	252	316	352
Winn	218	265	314	392	439

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	176	215	254	319	356
Avoyelles	218	265	314	392	439
Bienville	228	279	328	409	459
Cameron	176	215	254	319	356
Claiborne	228	279	328	409	459
De Soto	228	279	328	409	459
E Feliciana	184	223	262	329	369
Franklin	175	214	252	316	352
Iberia	261	320	375	469	525
Jackson	175	214	252	316	352
La Salle	218	265	314	392	439
Madison	175	214	252	316	352
Natchitoches	228	279	328	409	459
Pointe Coupee	184	223	262	329	369
Richland	175	214	252	316	352
St Helena	184	223	262	329	369
St Landry	212	257	302	380	425
Tangipahoa	207	252	296	371	416
Union	175	214	252	316	352
Vernon	218	265	314	392	439
Webster	198	241	284	354	397
W Feliciana	184	223	262	329	369

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A I N E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Bangor, ME MSA	327	398	468	586	657	Penobscot county towns of Bangor, Brewer, Eddington Glenburn, Hampden, Hermon, Holden, Kenduskeag, Old Town Orono, Orrington, Penobscot Indian I, Veazie Waldo county towns of Winterport
Lewiston-Auburn, ME MSA	344	410	463	518	589	Androscoggin county towns of Auburn, Greene, Lewiston Lisbon, Mechanic Falls, Poland, Sabattus
Portland, ME MSA	402	511	647	725	872	Cumberland county towns of Cape Elizabeth, Cumberland Falmouth, Freeport, Gorham, Gray, North Yarmouth Portland, Raymond, Scarborough, South Portland, Standish Westbrook, Windham, Yarmouth York county towns of Buxton, Hollis, Old Orchard Beach
Portsmouth-Dover-Rochester, NH-ME MSA	433	527	618	774	867	York county towns of Berwick, Eliot, Kittery North Berwick, South Berwick, Wells, York

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	299	353	417	511	565	Durham, Leeds, Livermore, Livermore Falls, Minot, Turner Wales
Aroostook	304	369	436	544	610	
Cumberland	337	409	481	598	665	Baldwin, Bridgton, Brunswick, Casco, Harpswell, Harrison Naples, New Gloucester, Pownal, Sebago
Franklin	317	359	427	505	573	
Hancock	319	380	444	555	619	
Kennebec	319	388	457	573	640	
Knox	308	375	441	553	619	
Lincoln	304	368	435	544	609	
Oxford	317	359	427	505	573	
Penobscot	314	380	441	553	619	Alton, Argyle, Bradford, Bradley, Burlington, Carmel Carroll, Charleston, Chester, Clifton, Corinna, Corinth Dexter, Dixmont, Drew, East Millinocket, Edinburg Enfield, Etna, Exeter, Garland, Grand Falls, Greenbush Greenfield, Howland, Hudson, Kingman, Lagrange Lakeville, Lee, Levant, Lincoln, Lowell, Mattawamkeag Maxfield, Medway, Milford, Millinocket, Mount Chase Newburgh, Newport, North Penobscot, Passadumkeag, Patten Plymouth, Prentiss, Seboeis, Springfield, Stacyville Stetson, Summit, Twombly, Webster, Whitney, Winn Woodville
Piscataquis	262	319	376	473	528	
Sagadahoc	348	469	505	589	691	
Somerset	304	368	435	544	609	
Waldo	308	375	441	553	619	Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom Islesboro, Jackson, Knox, Liberty, Lincolnville, Monroe Montville, Morrill, Northport, Palermo, Prospect Searsmont, Searsport, Stockton Springs, Swanville Thorndike, Troy, Unity, Waldo

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

M A I N E continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Washington	308	375	441	553	619	
York	385	454	573	589	715	Acton, Alfred, Arundel, Biddeford, Cornish, Dayton Kennebunk, Kennebunkport, Lebanon, Limerick, Limington Lyman, Newfield, Parsonsfield, Saco, Sanford, Shapleigh Waterboro

M A R Y L A N D

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Baltimore, MD MSA	368	448	527	659	739	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Annes, Baltimore
Columbia, MD MSA	461	560	659	823	923	Columbia
Cumberland, MD-WV MSA	268	319	373	461	515	Allegany
Hagerstown, MD MSA	299	364	429	537	600	Washington
Washington, DC-MD-VA MSA	486	591	695	869	973	Calvert, Charles, Frederick, Montgomery, Prince George'S
Wilmington, DE-NJ-MD PMSA	397	475	565	707	840	Cecil

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Caroline	283	339	399	501	561
Garrett	269	327	385	480	539
St Marys	373	451	526	659	730
Talbot	324	393	463	580	648
Worcester	292	357	416	520	583
Dorchester	290	352	416	520	583
Kent	295	360	423	530	593
Somerset	290	352	416	520	583
Wicomico	345	422	495	521	583

M A S S A C H U S E T T S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Boston, MA PMSA	499	606	713	891	999	Bristol county towns of Mansfield, Norton, Raynham Essex county towns of Lynn, Lynnfield, Nahant, Saugus Middlesex county towns of Acton, Arlington, Ashland, Ayer Bedford, Belmont, Boxborough, Burlington, Cambridge Carlisle, Concord, Everett, Framingham, Groton Holliston, Hopkinton, Hudson, Lexington, Lincoln Littleton, Malden, Marlborough, Maynard, Medford Melrose, Natick, Newton, North Reading, Reading Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury Townsend, Wakefield, Waltham, Watertown, Wayland, Weston Wilmington, Winchester, Woburn Norfolk county towns of Bellingham, Braintree, Brookline Canton, Cohasset, Dedham, Dover, Foxborough, Franklin Holbrook, Medfield, Medway, Millis, Milton, Needham Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton Walpole, Wellesley, Westwood, Weymouth, Wrentham Plymouth county towns of Carver, Duxbury, Hanover, Hanson

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A S S A C H U S E T T S continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
						Hingham, Hull, Kingston, Lakeville, Marshfield Middleborough, Norwell, Pembroke, Plymouth, Plympton Rockland, Scituate Suffolk county towns of Boston, Chelsea, Revere, Winthrop Worcester county towns of Berlin, Bolton, Harvard Hopedale, Lancaster, Mendon, Milford, Southborough Upton
Brockton, MA PMSA	440	531	666	808	906	Bristol county towns of Easton Norfolk county towns of Avon Plymouth county towns of Abington, Bridgewater, Brockton East Bridgewater, Halifax, West Bridgewater, Whitman
Fall River, MA-RI PMSA	383	457	549	636	702	Bristol county towns of Fall River, Somerset, Swansea Westport
Fitchburg-Leominster, MA MSA	420	508	600	750	841	Middlesex county towns of Ashby Worcester county towns of Ashburnham, Fitchburg Leominster, Lunenburg, Westminster
Lawrence-Haverhill, MA-NH PMSA	470	572	686	784	872	Essex county towns of Amesbury, Andover, Boxford Georgetown, Groveland, Haverhill, Lawrence, Merrimac Methuen, Newbury, Newburyport, North Andover, Salisbury West Newbury
Lowell, MA-NH PMSA	452	550	642	778	887	Middlesex county towns of Billerica, Chelmsford, Dracut Dunstable, Lowell, Pepperell, Tewksbury, Tyngsborough Westford
New Bedford, MA MSA	391	439	520	636	702	Bristol county towns of Acushnet, Dartmouth, Fairhaven Freetown, New Bedford Plymouth county towns of Marion, Mattapoisett, Rochester
Pawtucket-Woonsocket-Attleboro, RI-MA PMSA	372	450	530	650	743	Bristol county towns of Attleboro, North Attleborough Rehoboth, Seekonk Norfolk county towns of Plainville Worcester county towns of Blackstone, Millville
Pittsfield, MA MSA	388	471	550	684	772	Berkshire county towns of Cheshire, Dalton, Hinsdale Lanesborough, Lee, Lenox, Pittsfield, Richmond Stockbridge
Salem-Gloucester, MA PMSA	499	606	713	891	999	Essex county towns of Beverly, Danvers, Essex, Gloucester Hamilton, Ipswich, Manchester, Marblehead, Middleton Peabody, Rockport, Rowley, Salem, Swampscott, Topsfield Wenham
Springfield, MA MSA	404	490	577	722	808	Hampden county towns of Agawam, Chicopee, East Longmeadow Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery Palmer, Russell, Southwick, Springfield, Westfield West Springfield, Wilbraham Hampshire county towns of Belchertown, Easthampton Granby, Huntington, Northampton, Southampton South Hadley
Worcester, MA MSA	402	495	580	728	812	Worcester county towns of Auburn, Barre, Boylston Brookfield, Charlton, Clinton, Douglas, Dudley East Brookfield, Grafton, Holden, Leicester, Millbury

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

M A S S A C H U S E T T S continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
						Northborough, Northbridge, North Brookfield, Oxford Paxton, Princeton, Rutland, Shrewsbury, Spencer Sterling, Sutton, Uxbridge, Webster, Westborough West Boylston, Worcester
NONMETROPOLITAN COUNTIES	**EFF**	**1 BR**	**2 BR**	**3 BR**	**4 BR**	**Towns within non metropolitan counties**
Barnstable	520	641	734	917	1029	
Berkshire	341	415	488	611	684	Adams, Alford, Becket, Clarksburg, Egremont, Florida Great Barrington, Hancock, Monterey, Mount Washington New Ashford, New Marlborough, North Adams, Otis, Peru Sandisfield, Savoy, Sheffield, Tyringham, Washington West Stockbridge, Williamstown, Windsor
Bristol	378	457	539	647	720	Berkley, Dighton, Taunton
Dukes	520	641	734	917	1029	
Franklin	397	471	549	691	769	
Hampden	357	434	510	639	716	Blandford, Brimfield, Chester, Granville, Holland Tolland, Wales
Hampshire	464	539	660	795	923	Amherst, Chesterfield, Cummington, Goshen, Hadley Hatfield, Middlefield, Pelham, Plainfield, Ware Westhampton, Williamsburg, Worthington
Nantucket	520	641	734	917	1029	
Plymouth	403	490	576	700	807	Wareham
Worcester	378	446	539	660	734	Athol, Gardner, Hardwick, Hubbardston, New Braintree Oakham, Petersham, Phillipston, Royalston, Southbridge Sturbridge, Templeton, Warren, West Brookfield Winchendon

M I C H I G A N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Ann Arbor, MI PMSA	401	488	575	719	806	Washtenaw
Battle Creek, MI MSA	272	331	388	488	547	Calhoun
Benton Harbor, MI MSA	303	369	432	541	606	Berrien
Detroit, MI PMSA	311	379	446	557	624	Lapeer, Livingston, Macomb, Monroe, Oakland, St Clair Wayne
Flint, MI MSA	287	348	412	515	576	Genesee
Grand Rapids, MI MSA	322	395	463	578	653	Kent, Ottawa
Jackson, MI MSA	300	363	428	535	599	Jackson
Kalamazoo, MI MSA	312	376	442	544	606	Kalamazoo
Lansing-East Lansing, MI MSA	328	393	460	572	639	Clinton, Eaton, Ingham
Muskegon, MI MSA	266	323	381	477	534	Muskegon
Saginaw-Bay City-Midland, MI MSA	296	357	419	525	588	Bay, Midland, Saginaw

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I C H I G A N continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alcona	237	290	341	427	478
Allegan	275	336	394	493	553
Antrim	298	360	424	531	595
Baraga	243	295	347	435	488
Benzie	298	360	424	531	595
Cass	270	328	385	483	541
Cheboygan	237	290	341	427	478
Clare	261	317	375	468	524
Delta	234	285	337	420	471
Emmet	298	360	424	531	595
Gogebic	243	295	347	435	488
Gratiot	299	362	426	534	597
Houghton	273	332	391	488	588
Ionia	278	337	396	494	553
Iron	243	295	347	435	488
Kalkaska	298	360	424	531	595
Lake	273	333	391	489	549
Lenawee	296	358	422	529	593
Mackinac	234	285	337	420	471
Marquette	298	360	424	531	595
Mecosta	273	333	391	489	549
Missaukee	298	360	424	531	595
Montmorency	237	290	341	427	478
Oceana	265	321	379	475	531
Ontonagon	243	295	347	435	488
Oscoda	237	290	341	427	478
Presque Isle	237	290	341	427	478
St Joseph	277	338	398	498	557
Schoolcraft	234	285	337	420	471
Tuscola	268	326	382	479	537
Wexford	298	360	424	531	595

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alger	234	285	337	420	471
Alpena	237	290	341	427	478
Arenac	261	317	375	468	524
Barry	277	338	398	498	557
Branch	277	338	398	498	557
Charlevoix	298	360	424	531	595
Chippewa	234	285	337	420	471
Crawford	237	290	341	427	478
Dickinson	243	308	363	454	510
Gladwin	261	317	375	468	524
Grand Traverse	298	360	424	531	595
Hillsdale	296	358	422	529	593
Huron	268	326	382	479	537
Iosco	261	317	375	468	524
Isabella	299	362	426	534	597
Keweenaw	243	295	347	435	488
Leelanau	298	360	424	531	595
Luce	234	285	337	420	471
Manistee	298	360	424	531	595
Mason	273	333	391	489	549
Menominee	298	360	424	531	595
Montcalm	275	336	394	493	553
Newaygo	273	333	391	489	549
Ogemaw	261	317	375	468	524
Osceola	273	333	391	489	549
Otsewo	237	290	341	427	478
Roscommon	261	317	375	468	524
Sanilac	268	326	382	479	537
Shiawassee	295	357	421	526	591
Van Buren	270	328	385	483	541

M I N N E S O T A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Duluth, MN-WI MSA	304	362	427	535	600	St Louis
Fargo-Moorhead, ND-MN MSA	304	370	434	545	611	Clay
Minneapolis-St. Paul, MN-WI MSA	375	455	540	675	753	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Washington, Wright

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

M I N N E S O T A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rochester, MN MSA	322	391	461	576	645	Olmsted
St. Cloud, MN MSA	307	373	439	551	615	Benton, Sherburne, Stearns

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aitkin	276	336	395	495	555
Beltrami	265	322	379	473	532
Blue Earth	307	372	431	533	590
Carlton	278	338	395	495	555
Chippewa	245	299	352	441	493
Cook	276	336	395	495	555
Crow Wing	259	314	393	487	541
Douglas	275	335	393	493	553
Fillmore	254	309	365	456	509
Goodhue	265	322	376	468	524
Houston	254	309	365	456	509
Itasca	278	338	395	495	555
Kanabec	276	336	395	495	555
Kittson	265	322	379	473	532
Lac Qui Parle	245	299	352	441	493
Lake Of The Woods	265	322	379	473	532
Lincoln	253	305	357	444	494
Mcleod	289	352	414	519	579
Marshall	265	322	379	473	532
Meeker	289	352	414	519	579
Morrison	259	314	371	464	520
Murray	253	305	357	444	494
Nobles	253	305	357	444	494
Otter Tail	275	335	393	493	553
Pine	276	336	395	495	555
Polk	265	322	379	473	532
Red Lake	265	322	379	473	532
Renville	289	352	414	519	579
Rock	253	305	357	444	494
Sibley	287	350	410	513	575
Stevens	275	335	393	493	553
Todd	259	314	371	464	520
Wabasha	265	322	376	468	524
Waseca	261	318	374	468	524
Wilkin	275	335	393	493	553
Yellow Medicine	245	299	352	441	493

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Becker	275	335	393	493	553
Big Stone	245	299	352	441	493
Brown	261	318	374	468	524
Cass	259	314	371	464	520
Clearwater	265	322	379	473	532
Cottonwood	245	299	352	441	493
Dodge	249	302	355	444	498
Faribault	261	318	374	468	524
Freeborn	300	365	430	537	602
Grant	275	335	393	493	553
Hubbard	265	322	379	473	532
Jackson	253	305	357	444	494
Kandiyohi	289	352	414	519	579
Koochiching	276	336	395	495	555
Lake	276	336	395	495	555
Le Sueur	287	350	410	513	575
Lyon	253	305	357	444	494
Mahnomen	265	322	379	473	532
Martin	261	318	374	468	524
Mille Lacs	276	336	395	495	555
Mower	254	309	365	456	509
Nicollet	287	350	410	513	575
Norman	265	322	379	473	532
Pennington	265	322	379	473	532
Pipestone	253	305	357	444	494
Pope	275	335	393	493	553
Redwood	245	299	352	441	493
Rice	300	365	430	537	602
Roseau	265	322	379	473	532
Steele	300	365	430	537	602
Swift	245	299	352	441	493
Traverse	275	335	393	493	553
Wadena	259	314	371	464	520
Watonwan	261	318	374	468	524
Winona	256	309	365	456	509

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S I S S I P P I

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Biloxi-Gulfport, MS MSA	254	310	366	458	512	Hancock, Harrison
Jackson, MS MSA	324	393	464	581	651	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	291	352	414	516	577	De Soto
Pascagoula, MS MSA	279	337	396	499	559	Jackson

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	224	259	305	405	438
Amite	186	226	265	332	373
Benton	208	253	299	375	420
Calhoun	244	297	350	437	495
Chickasaw	251	297	350	441	492
Claiborne	186	226	265	332	373
Clay	241	281	329	413	463
Copiah	196	239	282	352	394
Forrest	242	295	347	433	486
George	189	230	271	338	379
Grenada	247	300	353	442	495
Humphreys	215	261	308	385	431
Itawamba	230	279	328	411	460
Jefferson	186	226	265	332	373
Jones	244	284	320	364	405
Lafayette	244	297	350	437	492
Lauderdale	240	291	343	430	481
Leake	205	250	296	371	416
Leflore	244	271	319	416	448
Lowndes	265	329	378	506	527
Marshall	208	253	299	375	420
Montgomery	187	228	267	334	375
Newton	205	250	296	371	416
Oktibbeha	231	281	329	413	463
Pearl River	242	295	347	433	486
Pike	224	259	305	405	438
Prentiss	208	253	299	375	420
Scott	205	250	296	371	416
Simpson	196	239	282	352	394
Stone	242	295	347	433	486
Tallahatchie	226	273	321	401	452
Tippah	208	253	299	375	420
Tunica	226	273	321	401	452
Walthall	186	226	265	332	373

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alcorn	223	270	318	396	446
Attala	187	228	267	334	375
Bolivar	215	261	308	385	431
Carroll	187	228	267	334	375
Choctaw	241	281	329	413	463
Clarke	242	294	343	430	481
Coahoma	226	273	321	401	452
Covington	189	230	271	338	379
Franklin	186	226	265	332	373
Greene	189	230	271	338	379
Holmes	187	228	267	334	375
Issaquena	215	261	308	385	431
Jasper	242	294	343	430	481
Jefferson Davis	189	230	271	338	379
Kemper	242	294	343	430	481
Lamar	242	295	347	433	486
Lawrence	186	226	265	332	373
Lee	243	297	348	435	486
Lincoln	186	226	265	332	373
Marion	242	295	347	433	486
Monroe	230	279	328	411	460
Neshoba	205	250	296	371	416
Noxubee	231	281	329	413	463
Panola	226	273	321	401	452
Perry	189	230	271	338	379
Pontotoc	251	297	350	441	492
Quitman	226	273	321	401	452
Sharkey	215	261	308	385	431
Smith	205	250	296	371	416
Sunflower	215	261	308	385	431
Tate	226	273	321	401	452
Tishomigo	208	253	299	375	420
Union	251	297	350	441	492
Warren	273	332	390	490	548

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Washington	215	261	308	385	431
Webster	241	281	329	413	463
Winston	241	281	329	413	463
Yazoo	273	332	390	490	548
Wayne	189	230	271	338	379
Wilkinson	186	226	265	332	373
Yalobusha	187	228	267	334	375

M I S S O U R I

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Columbia, MO MSA	265	322	379	474	531	Boone
Joplin, MO MSA	229	279	328	412	461	Jasper, Newton
Kansas City, MO-KS MSA	309	375	441	551	617	Cass, Clay, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	244	296	349	435	490	Buchanen
St. Louis, MO-IL MSA	315	384	452	568	636	Crawford, Franklin, Jefferson, St Charles, St Louis St. Louis
Springfield, MO MSA	254	311	365	458	511	Christian, Greene

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	232	281	332	417	466
Atchison	219	268	315	394	442
Barry	214	260	308	385	430
Bates	209	253	299	374	420
Bollinger	246	300	352	439	495
Caldwell	219	268	316	394	442
Camden	235	285	335	420	470
Carroll	226	275	324	404	455
Cedar	209	253	299	374	420
Clark	232	281	332	417	466
Cole	258	313	369	462	517
Crawford	225	274	321	402	453
Dallas	214	260	308	385	430
De Kalb	219	268	315	394	442
Douglas	203	247	290	362	407
Gasconade	225	274	321	402	453
Grundy	232	281	332	417	466
Henry	209	253	299	374	420
Holt	219	268	315	394	442
Howell	203	247	290	362	407
Johnson	235	286	353	453	471
Laclede	235	285	335	420	470
Lewis	230	278	328	410	456
Linn	232	281	332	417	466

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Andrew	244	296	349	435	490
Audrain	258	313	369	462	517
Barton	209	253	299	374	420
Benton	209	253	299	374	420
Butler	203	247	294	366	410
Callaway	258	313	369	462	517
Cape Girardeau	246	300	352	439	495
Carter	203	247	294	366	410
Chariton	226	275	324	404	455
Clinton	219	268	315	394	442
Cooper	258	313	369	462	517
Dade	214	260	308	385	430
Daviess	219	268	316	394	442
Dent	225	274	321	402	453
Dunklin	203	247	290	362	407
Gentry	219	268	315	394	442
Harrison	219	268	316	394	442
Hickory	209	253	299	374	420
Howard	258	313	369	462	517
Iron	246	300	352	439	495
Knox	232	281	332	417	466
Lawrence	214	260	308	385	430
Lincoln	225	274	321	402	453
Livingston	232	281	332	417	466

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

MISSOURI continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Mcdonald	214	260	308	385	430
Madison	246	300	352	439	495
Marion	230	278	328	410	456
Miller	235	285	335	420	470
Moniteau	258	313	369	462	517
Montgomery	225	274	321	402	453
New Madrid	203	247	290	362	407
Oregon	203	247	290	362	407
Ozark	203	247	290	362	407
Perry	246	300	352	439	495
Phelps	262	317	374	473	531
Polk	214	260	308	385	430
Putnam	232	281	332	417	466
Randolph	225	274	321	402	453
Ripley	203	247	294	366	410
Ste. Genevieve	246	300	352	439	495
Saline	226	275	324	404	455
Scotland	232	281	332	417	466
Shannon	203	247	290	362	407
Stoddard	203	247	290	362	407
Sullivan	232	281	332	417	466
Texas	203	247	290	362	407
Warren	225	274	321	402	453
Wayne	203	247	294	366	410
Worth	219	268	315	394	442

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Macon	225	274	321	402	453
Maries	225	274	321	402	453
Mercer	219	268	316	394	442
Mississippi	203	247	290	362	407
Monroe	225	274	321	402	453
Morgan	235	285	335	420	470
Nodaway	228	268	324	394	442
Osage	258	313	369	462	517
Pemiscot	203	247	290	362	407
Pettis	226	275	324	404	455
Pike	225	274	321	402	453
Pulaski	235	285	335	420	470
Ralls	230	278	328	410	456
Reynolds	203	247	290	362	407
St Clair	209	253	299	374	420
St Francois	246	300	352	439	495
Schuyler	232	281	332	417	466
Scott	246	300	352	439	495
Shelby	225	274	321	402	453
Stone	214	260	308	385	430
Taney	214	260	308	385	430
Vernon	209	253	299	374	420
Washington	225	274	321	402	453
Webster	214	260	308	385	430
Wright	203	247	290	362	407

MONTANA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Billings, MT MSA	345	420	494	617	692	Yellowstone
Great Falls, MT MSA	305	370	437	547	612	Cascade

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beaverhead	304	369	435	544	610
Blaine	284	345	405	508	569
Carbon	286	348	410	513	575
Chouteau	284	345	405	508	569
Daniels	284	345	405	508	569
Deer Lodge	304	369	435	544	610
Fergus	286	348	410	513	575

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Big Horn	286	348	410	513	575
Broadwater	304	369	435	544	610
Carter	286	348	410	513	575
Custer	286	348	410	513	575
Dawson	286	348	410	513	575
Fallon	286	348	410	513	575
Flathead	310	378	444	556	623

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

MONTANA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Gallatin	335	412	487	604	679
Glacier	284	345	405	508	569
Granite	304	369	435	544	610
Jefferson	304	369	435	544	610
Lake	310	378	444	556	623
Liberty	284	345	405	508	569
Mccone	286	348	410	513	575
Meagher	304	369	435	544	610
Missoula	310	378	444	556	623
Park	304	369	435	544	610
Phillips	284	345	405	508	569
Powder River	286	348	410	513	575
Prairie	286	348	410	513	575
Richland	286	348	410	513	575
Rosebud	286	348	410	513	575
Sheridan	284	345	405	508	569
Stillwater	286	348	410	513	575
Teton	284	345	405	508	569
Treasure	286	348	410	513	575
Wheatland	286	348	410	513	575
Yl-St-Nt-Pk	304	369	435	544	610

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Garfield	286	348	410	513	575
Golden Valley	286	348	410	513	575
Hill	284	345	405	508	569
Judith Basin	286	348	410	513	575
Lewis And Clark	348	429	506	627	702
Lincoln	310	378	444	556	623
Madison	304	369	435	544	610
Mineral	310	378	444	556	623
Musselshell	286	348	410	513	575
Petroleum	286	348	410	513	575
Pondera	284	345	405	508	569
Powell	304	369	435	544	610
Ravalli	310	378	444	556	623
Roosevelt	284	345	405	508	569
Sanders	310	378	444	556	623
Silver Bow	304	369	435	544	610
Sweet Grass	286	348	410	513	575
Toole	284	345	405	508	569
Valley	284	345	405	508	569
Wibaux	286	348	410	513	575

NEBRASKA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Lincoln, NE MSA	301	366	431	539	604	Lancaster
Omaha, NE-IA MSA	296	359	422	529	594	Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	293	356	419	524	588	Dakota

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	269	328	385	483	540
Arthur	228	277	326	408	456
Blaine	221	268	315	395	444
Box Butte	251	306	360	450	504
Brown	221	268	315	395	444
Burt	241	294	345	433	485
Cass	238	290	341	426	479
Chase	228	277	326	408	456
Cheyenne	221	268	315	395	444
Colfax	241	294	345	433	485

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Antelope	261	317	375	467	525
Banner	221	268	315	395	444
Boone	241	294	345	433	485
Boyd	221	268	315	395	444
Buffalo	269	328	385	483	540
Butler	238	290	341	426	479
Cedar	261	317	375	467	525
Cherry	221	268	315	395	444
Clay	269	328	385	483	540
Cuming	241	294	345	433	485

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Custer	221	268	315	395	444
Dawson	228	277	326	408	456
Dixon	261	317	375	467	525
Dundy	228	277	326	408	456
Franklin	269	328	385	483	540
Furnas	228	277	326	408	456
Garden	221	268	315	395	444
Gosper	228	277	326	408	456
Greeley	221	268	315	395	444
Hamilton	269	328	385	483	540
Hayes	228	277	326	408	456
Holt	225	276	324	404	450
Howard	269	328	385	483	540
Johnson	238	290	341	426	479
Keith	228	277	326	408	456
Kimball	221	268	315	395	444
Lincoln	228	277	326	408	456
Loup	221	268	315	395	444
Madison	261	317	375	467	525
Morrill	221	268	315	395	444
Nemaha	238	290	341	426	479
Otoe	238	290	341	426	479
Perkins	228	277	326	408	456
Pierce	261	317	375	467	525
Polk	238	290	341	426	479
Richardson	238	290	341	426	479
Saline	238	290	341	426	479
Scotts Bluff	257	309	360	447	498
Sheridan	221	268	315	395	444
Sioux	221	268	315	395	444
Thayer	238	290	341	426	479
Thurston	241	294	345	433	485
Wayne	261	317	375	467	525
Wheeler	221	268	315	395	444

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Dawes	221	268	315	395	444
Deuel	221	268	315	395	444
Dodge	241	294	345	433	485
Fillmore	238	290	341	426	479
Frontier	228	277	326	408	456
Gage	264	320	377	472	528
Garfield	221	268	315	395	444
Grant	228	277	326	408	456
Hall	269	328	385	483	540
Harlan	269	328	385	483	540
Hitchcock	228	277	326	408	456
Hooker	228	277	326	408	456
Jefferson	238	290	341	426	479
Kearney	269	328	385	483	540
Keya Paha	225	276	324	404	450
Knox	261	317	375	467	525
Logan	228	277	326	408	456
Mcpherson	228	277	326	408	456
Merrick	269	328	385	483	540
Nance	241	294	345	433	485
Nuckolls	269	328	385	483	540
Pawnee	238	290	341	426	479
Phelps	269	328	385	483	540
Platte	241	294	345	433	485
Red Willow	228	277	326	408	456
Rock	225	276	324	404	450
Saunders	238	290	341	426	479
Seward	238	290	341	426	479
Sherman	221	268	315	395	444
Stanton	261	317	375	467	525
Thomas	228	277	326	408	456
Valley	221	268	315	395	444
Webster	269	328	385	483	540
York	238	290	341	426	479

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

N E V A D A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Las Vegas, NV MSA	431	523	616	771	864	Clark
Reno, NV MSA	531	645	761	950	1066	Washoe

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Churchill	379	455	536	670	751
Elko	379	455	536	670	751
Eureka	375	455	536	670	751
Lander	379	455	536	670	751
Lyon	379	455	536	670	751
Nye	375	455	536	670	751
Storey	379	455	536	670	751
Carson City	379	455	536	670	751
Douglas	379	455	536	670	751
Esmeralda	375	455	536	670	751
Humboldt	379	455	536	670	751
Lincoln	375	455	536	670	751
Mineral	379	455	536	670	751
Pershing	379	455	536	670	751
White Pine	375	455	536	670	751

N E W H A M P S H I R E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Lawrence-Haverhill, MA-NH PMSA	470	572	686	784	872	Rockingham county towns of Atkinson, Brentwood, Danville Derry, East Kingston, Hampstead, Kingston, Newton Plaistow, Salem, Sandown, Seabrook, Windham
Lowell, MA-NH PMSA	452	550	642	778	887	Hillsborough county towns of Pelham
Manchester, NH MSA	417	507	596	745	837	Hillsborough county towns of Bedford, Goffstown Manchester Merrimack county towns of Allenstown, Hooksett Rockingham county towns of Auburn, Candia
Nashua, NH PMSA	472	573	676	846	947	Hillsborough county towns of Amherst, Brookline, Hollis Hudson, Litchfield, Merrimack, Milford, Mont Vernon Nashua, Wilton Rockingham county towns of Londonderry
Portsmouth-Dover-Rochester, NH-ME MSA	433	527	618	774	867	Rockingham county towns of Exeter, Greenland, Hampton New Castle, Newfields, Newington, Newmarket North Hampton, Portsmouth, Rye, Stratham Strafford county towns of Barrington, Dover, Durham Farmington, Lee, Madbury, Milton, Rochester, Rollinsford Somersworth

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	362	437	509	631	707	
Carroll	358	435	511	639	717	
Cheshire	437	530	624	780	873	
Coos	334	405	478	596	669	
Grafton	372	454	533	666	746	
Hillsborough	474	575	677	846	948	Antrim, Bennington, Deering, Francestown, Greenfield

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

N E W H A M P S H I R E continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Merrimack	474	575	677	846	948	Greenville, Hancock, Hillsborough, Lyndeborough, Mason New Boston, New Ipswich, Peterborough, Sharon, Temple Weare, Windsor Andover, Boscawen, Bow, Bradford, Canterbury, Chichester Concord, Danbury, Dunbarton, Epsom, Franklin, Henniker Hill, Hopkinton, Loudon, Newbury, New London, Northfield Pembroke, Pittsfield, Salisbury, Sutton, Warner, Webster Wilmot
Rockingham	458	557	654	818	905	Chester, Deerfield, Epping, Fremont, Hampton Falls Kensington, Northwood, Nottingham, Raymond South Hampton
Strafford	405	495	583	730	805	Middleton, New Durham, Strafford
Sullivan	362	437	510	636	714	

N E W J E R S E Y

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Allentown-Bethlehem, PA-NJ MSA	332	403	472	594	662	Warren
Atlantic City, NJ MSA	398	486	570	712	800	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	561	680	807	1009	1130	Bergen, Passaic
Jersey City, NJ PMSA	397	483	568	711	796	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	519	631	742	929	1040	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	467	566	667	833	935	Monmouth, Ocean
Newark, NJ PMSA	465	565	665	831	931	Essex, Morris, Sussex, Union
Philadelphia, PA-NJ PMSA	388	471	555	693	777	Burlington, Camden, Gloucester
Trenton, NJ PMSA	476	578	681	851	953	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	382	464	545	683	765	Cumberland
Wilmington, DE-NJ-MD PMSA	397	475	565	707	840	Salem

N E W M E X I C O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albuquerque, NM MSA	356	432	508	636	713	Bernalillo
Las Cruces, NM MSA	283	342	403	505	566	Dona Ana
Santa Fe, NM MSA	414	503	593	740	830	Los Alamos, Sante Fe

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

NEW MEXICO continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Catron	255	309	365	456	511
Cibola	255	309	365	456	511
Curry	263	320	377	472	527
Eddy	304	370	437	546	611
Guadalupe	263	320	377	472	527
Hidalgo	255	309	365	456	511
Lincoln	277	336	396	495	555
Mckinley	354	429	506	634	709
Otero	277	336	396	495	555
Rio Arriba	237	288	338	423	475
Sandoval	299	364	428	536	601
San Miguel	263	320	377	472	527
Socorro	277	336	396	495	555
Torrance	263	320	377	472	527
Valencia	255	309	365	456	511

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Chaves	277	336	396	495	555
Colfax	263	320	377	472	527
De Baca	263	320	377	472	527
Grant	255	309	365	456	511
Harding	263	320	377	472	527
Lea	304	370	437	546	611
Luna	255	309	365	456	511
Mora	263	320	377	472	527
Quay	263	320	377	472	527
Roosevelt	263	320	377	472	527
San Juan	354	429	506	634	709
Sierra	277	336	396	495	555
Taos	284	343	404	506	568
Union	263	320	377	472	527

NEW YORK

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albany-Schenectady-Troy, NY MSA	340	409	482	607	675	Albany, Greene, Montgomery, Rensselaer, Saratoga Schenectady
Binghamton, NY MSA	306	368	436	539	605	Broome, Tioga
Buffalo, NY PMSA	310	377	444	542	607	Erie
Elmira, NY MSA	310	377	444	555	623	Chemung
Glens Falls, NY MSA	320	389	458	572	643	Warren, Washington
Nassau-Suffolk, NY PMSA	552	671	789	988	1104	Nassau, Suffolk
New York, NY PMSA	415	504	593	743	832	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester, NY	495	600	707	883	988	Westchester
Niagara Falls, NY PMSA	298	361	427	533	597	Niagara
Orange County, NY PMSA	426	518	609	761	852	Orange
Poughkeepsie, NY MSA	465	565	666	832	933	Dutchess
Rochester, NY MSA	364	446	525	656	731	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	321	384	450	563	631	Madison, Onondaga, Oswego
Utica-Rome, NY MSA	294	357	420	525	588	Herkimer, Oneida

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E W Y O R K continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allegany	274	327	384	481	540
Cayuga	320	389	458	572	643
Chenango	317	384	452	566	633
Columbia	301	365	431	540	605
Delaware	294	359	422	526	590
Franklin	291	354	415	520	583
Genesee	298	361	426	532	596
Jefferson	326	398	468	584	655
Otsego	294	359	422	526	590
Schoharie	294	359	422	526	590
Seneca	320	389	458	572	643
Sullivan	341	414	487	609	683
Ulster	376	456	538	671	753
Yates	299	363	428	537	599

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Cattaraugus	270	326	384	481	540
Chautauqua	287	349	411	516	576
Clinton	305	364	428	532	585
Cortland	327	399	470	588	658
Essex	292	354	415	520	583
Fulton	260	318	373	468	523
Hamilton	291	354	415	520	583
Lewis	313	380	447	559	627
St Lawrence	298	361	426	532	596
Schuyler	301	365	431	540	605
Steuben	301	365	431	540	605
Tompkins	327	399	470	588	658
Wyoming	299	361	426	532	596

N O R T H C A R O L I N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Asheville, NC MSA	263	321	378	471	528	Buncombe
Burlington, NC MSA	319	387	456	570	640	Alamance
Charlotte-Gastonia-Rock Hill, NC-SC MSA	294	354	416	519	581	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	251	305	361	452	506	Cumberland
Greensboro--Winston-Salem--High Point, NC MSA	275	335	393	494	554	Davidson, Davie, Forsyth, Guilford, Randolph, Stokes Yadkin
Hickory, NC MSA	241	292	344	431	484	Alexander, Burke, Catawba
Jacksonville, NC MSA	249	304	359	449	503	Onslow
Raleigh-Durham, NC MSA	316	384	453	566	634	Durham, Franklin, Orange, Wake
Wilmington, NC MSA	263	321	378	471	528	New Hanover

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alleghany	238	287	336	421	462
Ashe	238	287	336	421	462
Beaufort	263	321	378	471	528
Bladen	254	310	365	457	511
Caldwell	238	288	339	426	475
Carteret	247	301	354	445	499
Chatham	316	384	453	566	634
Chowan	254	305	357	443	494
Cleveland	276	334	393	492	551
Craven	247	301	354	445	499
Dare	254	305	357	443	494

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anson	240	288	336	422	471
Avery	247	298	350	437	479
Bertie	263	321	378	471	528
Brunswick	239	291	342	429	480
Camden	254	305	357	443	494
Caswell	239	290	341	428	479
Cherokee	205	250	296	371	416
Clay	205	250	296	371	416
Columbus	249	303	358	447	501
Currituck	290	348	399	496	547
Duplin	224	271	319	397	447

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Edgecombe	247	301	354	445	499
Graham	205	250	296	371	416
Greene	231	280	329	413	462
Harnett	231	280	329	413	462
Henderson	259	317	373	466	522
Hoke	224	271	319	397	447
Iredell	239	369	430	496	555
Johnston	244	297	350	437	492
Lee	279	344	398	498	558
Mcdowell	250	304	358	448	501
Madison	259	317	373	466	522
Mitchell	247	298	350	437	480
Moore	240	288	336	422	471
Northampton	247	301	354	445	499
Pasquotank	254	305	357	443	494
Perquimans	254	305	357	443	494
Pitt	263	321	378	471	528
Richmond	240	288	336	422	471
Rockingham	239	290	341	428	479
Sampson	231	280	329	413	462
Stanly	236	287	338	424	473
Swain	205	250	296	371	416
Tyrrell	254	305	357	443	494
Warren	229	278	326	409	458
Watauga	339	409	479	599	658
Wilkes	285	342	402	503	551
Yancey	265	320	376	469	516

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Gates	254	305	357	443	494
Granville	229	278	326	409	458
Halifax	247	301	354	445	499
Haywood	239	291	343	430	482
Hertford	263	321	378	471	528
Hyde	254	305	357	443	494
Jackson	247	301	354	445	497
Jones	247	301	354	445	499
Lenoir	247	301	354	445	499
Macon	259	316	373	466	523
Martin	263	321	378	471	528
Montgomery	240	288	336	422	471
Nash	253	309	364	456	510
Pamlico	247	301	354	445	499
Pender	218	265	361	450	505
Person	229	278	326	409	458
Polk	250	304	358	448	501
Robeson	213	278	308	381	427
Rutherford	250	304	358	448	501
Scotland	213	258	305	381	427
Surry	226	274	322	403	452
Transylvania	259	317	373	466	522
Vance	229	278	326	409	458
Washington	254	305	357	443	494
Wayne	231	280	329	413	462
Wilson	253	309	364	456	510

NORTH DAKOTA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bismarck, ND MSA	304	370	435	544	611	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	304	370	434	545	611	Cass
Grand Forks, ND MSA	289	351	415	517	580	Grand Forks

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	256	313	369	462	516
Benson	264	320	377	471	530
Bottineau	256	313	369	462	516
Burke	256	313	369	462	516
Dickey	264	320	377	471	530
Dunn	256	313	369	462	516
Emmons	232	281	332	417	465
Golden Valley	256	313	369	462	516
Griggs	264	320	377	471	530
Kidder	232	281	332	417	465
Logan	264	320	377	471	530
Mcintosh	264	320	377	471	530
Mclean	232	281	332	417	465
Mountrail	256	313	369	462	516
Oliver	232	281	332	417	465
Pierce	256	313	369	462	516
Ransom	239	290	343	428	479
Richland	239	290	343	428	479
Sargent	239	290	343	428	479
Sioux	232	281	332	417	465
Stark	256	313	369	462	516
Stutsman	264	320	377	471	530
Traill	239	290	343	428	479
Ward	256	313	369	462	516
Williams	256	313	369	462	516

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barnes	264	320	377	471	530
Billings	256	313	369	462	516
Bowman	256	313	369	462	516
Cavalier	264	320	377	471	530
Divide	256	313	369	462	516
Eddy	264	320	377	471	530
Foster	264	320	377	471	530
Grant	232	281	332	417	465
Hettinger	256	313	369	462	516
La Moore	264	320	377	471	530
Mchenry	256	313	369	462	516
Mckenzie	256	313	369	462	516
Mercer	232	281	332	417	465
Nelson	264	320	377	471	530
Pembina	264	320	377	471	530
Ramsey	264	320	377	471	530
Renville	256	313	369	462	516
Rolette	264	320	377	471	530
Sheridan	232	281	332	417	465
Slope	256	313	369	462	516
Steele	239	290	343	428	479
Towner	264	320	377	471	530
Walsh	264	320	377	471	530
Wells	264	320	377	471	530

OHIO

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Akron, OH PMSA	299	363	428	536	600	Portage, Summit
Canton, OH MSA	264	320	377	471	530	Carroll, Stark
Cincinnati, OH-KY-IN PMSA	309	376	442	552	619	Clermont, Hamilton, Warren
Cleveland, OH PMSA	283	345	406	509	571	Cuyahoga, Geauga, Lake, Medina
Columbus, OH MSA	301	361	429	536	603	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway Union
Dayton-Springfield, OH MSA	278	340	395	497	552	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	313	382	449	562	629	Butler
Huntington-Ashland, WV-KY-OH MSA	292	354	418	523	588	Lawrence
Lima, OH MSA	279	340	399	501	562	Allen, Auglaize
Lorain-Elyria, OH PMSA	293	358	422	528	591	Lorain
Mansfield, OH MSA	252	309	361	454	507	Richland

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

O H I O continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Parkersburg-Marietta, WV-OH MSA	275	334	393	494	552	Washington
Steubenville-Weirton, OH-WV MSA	282	344	402	505	568	Jefferson
Toledo, OH MSA	320	390	460	575	644	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	275	334	394	493	552	Belmont
Youngstown-Warren, OH MSA	279	340	399	501	562	Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	250	302	353	439	495
Ashtabula	295	358	423	530	592
Brown	250	302	353	439	495
Clinton	254	311	365	458	511
Coshocton	228	278	328	407	458
Darke	254	311	365	458	511
Erie	288	350	413	515	578
Gallia	275	334	393	494	552
Hancock	271	328	387	483	543
Harrison	253	309	363	456	509
Highland	250	302	353	439	495
Holmes	268	326	384	480	538
Jackson	246	300	352	439	495
Logan	271	328	387	483	543
Meigs	243	295	348	434	488
Monroe	273	332	390	490	547
Morrow	246	300	352	439	495
Noble	273	332	390	490	547
Paulding	285	346	407	509	572
Pike	246	300	352	439	495
Putnam	275	334	393	494	552
Sandusky	288	350	413	515	578
Seneca	253	309	363	456	509
Tuscarawas	268	326	384	480	538
Vinton	275	334	393	494	552
Williams	285	346	407	509	572

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashland	276	337	395	496	554
Athens	262	322	380	473	531
Champaign	267	324	383	478	536
Columbiana	262	317	375	468	525
Crawford	253	309	363	456	509
Defiance	285	346	407	509	572
Fayette	254	311	365	458	511
Guernsey	270	327	386	482	541
Hardin	271	328	387	483	543
Henry	285	346	407	509	572
Hocking	243	295	348	434	488
Huron	253	309	363	456	509
Knox	246	300	352	439	495
Marion	246	300	352	439	495
Mercer	254	311	365	458	511
Morgan	273	332	390	490	547
Muskingum	254	309	363	456	509
Ottawa	288	350	413	515	578
Perry	243	295	348	434	488
Preble	277	338	396	498	556
Ross	254	311	365	458	511
Scioto	246	300	352	439	495
Shelby	254	311	365	458	511
Van Wert	275	334	393	494	552
Wayne	276	337	395	496	554
Wyandot	253	309	363	456	509

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

O K L A H O M A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Enid, OK MSA	302	369	434	543	608	Garfield
Fort Smith, AR-OK MSA	251	306	361	452	506	Sequoyah
Lawton, OK MSA	260	317	374	467	523	Comanche
Oklahoma City, OK MSA	329	395	465	570	642	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	330	401	472	590	661	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	203	249	291	363	404
Atoka	178	217	256	320	358
Beckham	225	273	322	403	452
Bryan	214	260	306	384	430
Carter	214	260	306	384	430
Choctaw	178	217	256	320	358
Coal	178	217	256	320	358
Craig	258	315	370	463	519
Delaware	201	246	288	360	404
Ellis	230	281	331	412	464
Grady	213	259	304	382	428
Greer	225	273	322	403	452
Harper	230	281	331	412	464
Hughes	207	252	296	371	415
Jefferson	213	259	304	382	428
Kay	267	324	382	477	535
Kiowa	225	273	322	403	452
Le Flore	178	217	256	320	358
Love	214	260	306	384	430
Mcintosh	207	252	296	371	415
Marshall	214	260	306	384	430
Murray	214	260	306	384	430
Noble	267	324	382	477	535
Okfuskee	207	252	296	371	415
Ottawa	258	315	370	463	519
Payne	255	309	364	456	511
Pontotoc	214	260	306	384	430
Roger Mills	225	273	322	403	452
Stephens	213	259	304	382	428
Tillman	213	259	304	382	428
Washita	225	273	322	403	452
Woodward	230	281	331	412	464

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alfalfa	230	281	331	412	464
Beaver	230	281	331	412	464
Blaine	230	281	331	412	464
Caddo	213	259	304	382	428
Cherokee	203	249	291	363	404
Cimarron	230	281	331	412	464
Cotton	213	259	304	382	428
Custer	225	273	322	403	452
Dewey	230	281	331	412	464
Garvin	214	260	306	384	430
Grant	267	324	382	477	535
Harmon	225	273	322	403	452
Haskell	178	217	256	320	358
Jackson	225	273	322	403	452
Johnston	214	260	306	384	430
Kingfisher	267	324	382	477	535
Latimer	178	217	256	320	358
Lincoln	255	309	364	456	511
Mccurtain	226	276	325	405	454
Major	230	281	331	412	464
Mayes	268	325	384	479	537
Muskogee	207	252	296	371	415
Nowata	258	315	370	463	519
Okmulgee	207	252	296	371	415
Pawnee	255	309	364	456	511
Pittsburg	178	217	256	320	358
Pushmataha	178	217	256	320	358
Seminole	212	258	304	377	419
Texas	230	281	331	412	464
Washington	258	315	370	463	519
Woods	230	281	331	412	464

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

051089

OREGON

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Eugene-Springfield, OR MSA	375	457	538	673	753	Lane
Medford, OR MSA	373	453	534	667	748	Jackson
Portland, OR PMSA	331	403	474	592	664	Clackamas, Multnomah, Washington, Yamhill
Salem, OR MSA	350	428	503	628	704	Marion, Polk

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Baker	342	415	489	612	685
Clatsop	332	405	476	594	666
Coos	357	434	511	639	716
Curry	357	434	511	639	716
Douglas	357	434	511	639	716
Grant	342	415	489	612	685
Hood River	362	440	518	649	725
Josephine	357	434	511	639	716
Lake	326	397	468	585	655
Linn	348	423	500	624	698
Morrow	342	415	489	612	685
Tillamook	332	405	476	594	666
Union	342	415	489	612	685
Wasco	362	440	518	649	725

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Benton	348	423	500	624	698
Columbia	332	405	476	594	666
Crook	362	440	518	649	725
Deschutes	362	440	518	649	725
Gilliam	342	415	489	612	685
Harney	326	397	468	585	655
Jefferson	362	440	518	649	725
Klamath	326	397	468	585	655
Lincoln	332	405	476	594	666
Malheur	326	397	468	585	655
Sherman	362	440	518	649	725
Umatilla	342	415	489	612	685
Wallowa	342	415	489	612	685
Wheeler	342	415	489	612	685

PENNSYLVANIA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Allentown-Bethlehem, PA-NJ MSA	332	403	472	594	662	Carbon, Lehigh, Northampton
Altoona, PA MSA	295	358	422	527	591	Blair
Beaver County, PA PMSA	262	318	375	468	525	Beaver
Erie, PA MSA	339	413	485	608	681	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	352	422	499	623	697	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	286	349	410	512	575	Cambria, Somerset
Lancaster, PA MSA	355	432	507	636	712	Lancaster
Philadelphia, PA-NJ PMSA	388	471	555	693	777	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	276	335	395	493	553	Alleghany, Fayette, Washington, Westmoreland
Reading, PA MSA	332	404	475	594	666	Berks
Scranton--Wilkes-Barre, PA MSA	269	332	387	477	541	Columbia, Lackawanna, Luzerne, Monroe, Wyoming
Sharon, PA MSA	314	381	451	564	632	Mercer
State College, PA MSA	379	461	544	679	761	Centre
Williamsport, PA MSA	286	349	410	512	575	Lycoming
York, PA MSA	319	389	457	572	641	Adams, York

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Armstrong	330	400	472	590	661
Bradford	273	333	392	490	548
Cameron	277	337	397	497	557
Clearfield	283	344	405	506	567
Crawford	281	339	401	502	563
Forest	270	330	388	484	544
Fulton	266	324	381	477	533
Huntingdon	266	324	381	477	533
Jefferson	283	344	405	506	567
Lawrence	281	339	401	502	563
Mifflin	274	334	400	493	550
Northumberland	295	344	405	506	567
Potter	277	337	397	497	557
Snyder	274	334	393	493	550
Susquehanna	273	333	392	490	548
Union	317	372	458	569	619
Warren	281	339	401	502	563

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bedford	266	324	381	477	533
Butler	328	399	469	588	657
Clarion	270	330	388	484	544
Clinton	277	335	394	493	550
Elk	277	337	397	497	557
Franklin	304	370	434	545	609
Greene	283	344	405	506	567
Indiana	330	400	472	590	661
Juniata	274	334	393	493	550
Mckean	277	337	397	497	557
Montour	283	344	405	506	567
Pike	393	477	561	701	785
Schuylkill	307	360	437	529	576
Sullivan	273	333	392	490	548
Tioga	273	333	392	490	548
Venango	270	330	388	484	544
Wayne	335	407	479	598	671

RHODE ISLAND

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Fall River, MA-RI PMSA	383	457	549	636	702	Newport county towns of Little Compton, Tiverton
New London-Norwich, CT-RI MSA	424	516	606	758	850	Washington county towns of Hopkinton, Westerly
Pawtucket-Woonsocket-Attleboro, RI-MA PMSA	372	450	530	650	743	Providence county towns of Burrillville, Central Falls Cumberland, Lincoln, North Smithfield, Pawtucket Smithfield, Woonsocket
Providence, RI PMSA	405	492	579	724	811	Bristol county towns of Barrington, Bristol, Warren Kent county towns of Coventry, East Greenwich, Warwick West Warwick Newport county towns of Jamestown Providence county towns of Cranston, East Providence Foster, Glocester, Johnston, North Providence Providence, Scituate Washington county towns of Exeter, Narragansett North Kingstown, Richmond, South Kingstown

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Kent	354	430	507	634	710	West Greenwich
Newport	463	562	662	827	927	Middletown, Newport, Portsmouth
Washington	354	430	507	634	710	Charlestown, New Shoreham

S O U T H C A R O L I N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anderson, SC MSA	239	290	340	428	478	Anderson
Augusta, GA-SC MSA	277	334	390	487	546	Aiken
Charleston, SC MSA	295	360	424	528	593	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	294	354	416	519	581	York
Columbia, SC MSA	298	364	429	536	599	Lexington, Richland
Florence, SC MSA	242	294	347	434	486	Florence
Greenville-Spartanburg, SC MSA	260	317	374	467	524	Greenville, Pickens, Spartanburg

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Abbeville	210	255	302	374	415
Bamberg	218	267	314	393	440
Beaufort	271	330	389	486	545
Cherokee	210	254	300	376	423
Chesterfield	209	253	298	374	420
Colleton	271	330	389	486	545
Dillon	209	253	298	374	420
Fairfield	205	250	295	369	413
Greenwood	210	255	302	374	415
Horry	253	308	363	454	509
Kershaw	237	287	337	424	474
Laurens	210	255	302	374	415
Mccormick	205	250	295	369	413
Marlboro	209	253	298	374	420
Oconee	258	316	372	465	521
Saluda	205	250	295	369	413
Union	210	254	300	376	423

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allendale	218	267	314	393	440
Barnwell	218	267	314	393	440
Calhoun	225	274	325	397	445
Chester	210	254	300	376	423
Clarendon	237	287	337	424	474
Darlington	209	253	298	374	420
Edgefield	205	250	295	369	413
Georgetown	253	308	363	454	509
Hampton	271	330	389	486	545
Jasper	271	330	389	486	545
Lancaster	226	277	326	403	450
Lee	237	287	337	424	474
Marion	209	253	298	374	420
Newberry	205	250	295	369	413
Orangeburg	218	267	314	393	440
Sumter	237	287	337	424	474
Williamsburg	253	308	363	454	509

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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S O U T H D A K O T A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rapid City, SD MSA	277	334	389	483	540	Pennington
Sioux Falls, SD MSA	292	355	418	524	586	Minnehaha

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aurora	249	301	352	441	493
Bennett	226	274	323	405	453
Brookings	244	295	344	428	484
Brule	246	299	352	441	493
Butte	269	327	385	483	540
Charles Mix	246	299	352	441	493
Clay	246	299	352	441	493
Corson	226	274	323	405	453
Davison	249	301	352	441	493
Deuel	221	265	316	392	435
Douglas	246	299	352	441	493
Fall River	269	327	385	483	540
Grant	244	295	344	428	484
Haakon	226	274	323	405	453
Hand	249	301	352	437	487
Harding	269	327	385	483	540
Hutchinson	246	299	352	441	493
Jackson	226	274	323	405	453
Jones	226	274	323	405	453
Lake	214	261	306	384	430
Lincoln	249	301	352	441	493
Mccook	214	261	306	384	430
Marshall	238	291	343	430	482
Mellette	226	274	323	405	453
Moody	214	261	306	384	430
Potter	226	274	323	405	453
Sanborn	249	301	352	441	493
Spink	238	291	343	430	482
Sully	226	274	323	405	453
Tripp	226	274	323	405	453
Union	246	299	352	441	493
Yankton	246	299	352	441	493

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beadle	249	301	352	437	487
Bon Homme	246	299	352	441	493
Brown	266	322	377	472	528
Buffalo	226	274	323	405	453
Campbell	226	274	323	405	453
Clark	221	265	316	392	435
Codington	244	295	344	428	484
Custer	269	327	385	483	540
Day	238	291	343	430	482
Dewey	226	274	323	405	453
Edmunds	238	291	343	430	482
Faulk	238	291	343	430	482
Gregory	226	274	323	405	453
Hamlin	221	265	316	392	435
Hanson	249	301	352	441	493
Hughes	295	361	422	528	590
Hyde	226	274	323	405	453
Jerauld	249	301	352	441	493
Kingsbury	214	261	306	384	430
Lawrence	275	327	385	483	540
Lyman	226	274	323	405	453
Mcpherson	238	291	343	430	482
Meade	277	334	389	483	540
Miner	214	261	306	384	430
Perkins	226	274	323	405	453
Roberts	238	291	343	430	482
Shannon	226	274	323	405	453
Stanley	295	361	422	528	590
Todd	226	274	323	405	453
Turner	249	301	352	441	493
Walworth	226	274	323	405	453
Ziebach	226	274	323	405	453

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

T E N N E S S E E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Chattanooga, TN-GA MSA	295	359	422	528	593	Hamilton, Marion, Sequatchie
Clarksville-Hopkinsville, TN-KY MSA	273	343	430	522	580	Montgomery
Jackson, TN MSA	268	322	382	476	537	Madison
Johnson City-Kingsport-Bristol, TN-VA MSA	247	300	353	442	496	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	272	332	389	487	546	Anderson, Blount, Grainger, Jefferson, Knox, Sevier Union
Memphis, TN-AR-MS MSA	291	352	414	516	577	Shelby, Tipton
Nashville, TN MSA	323	394	464	579	650	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bedford	232	292	332	413	464	Benton	218	265	313	392	438
Bledsoe	242	295	347	434	486	Bradley	242	295	347	434	486
Campbell	197	240	285	354	394	Cannon	218	268	316	394	442
Carroll	218	265	313	392	438	Chester	238	291	342	428	479
Claiborne	197	240	285	354	394	Clay	189	233	276	345	383
Cocke	220	268	314	394	441	Coffee	232	292	332	413	464
Crockett	223	270	317	398	446	Cumberland	218	268	316	394	442
Decatur	238	291	342	428	479	De Kalb	218	268	316	394	442
Dyer	223	270	317	398	446	Fayette	228	278	327	409	458
Fentress	218	268	316	394	442	Franklin	262	316	372	466	520
Gibson	223	270	317	398	446	Giles	232	292	332	413	464
Greene	216	263	308	386	434	Grundy	242	295	347	434	486
Hamblen	229	278	329	410	460	Hancock	216	263	308	386	434
Hardeman	238	291	342	428	479	Hardin	238	291	342	428	479
Haywood	228	286	327	409	458	Henderson	238	291	342	428	479
Henry	218	265	313	392	438	Hickman	232	292	332	413	464
Houston	201	244	288	360	403	Humphreys	201	244	288	360	403
Jackson	189	233	276	345	383	Johnson	210	256	301	377	422
Lake	223	270	317	398	446	Lauderdale	228	286	327	409	458
Lawrence	232	292	332	413	464	Lewis	230	280	331	413	464
Lincoln	262	316	372	466	520	Loudon	232	286	334	418	468
Mcminn	242	295	347	434	486	Mcnairy	238	291	342	428	479
Macon	218	268	316	394	442	Marshall	232	292	332	413	464
Maury	232	292	332	413	464	Meigs	242	295	347	434	486
Monroe	232	286	334	418	468	Moore	232	292	332	413	464
Morgan	197	240	285	354	394	Obion	226	278	317	401	446
Overton	218	268	316	394	442	Perry	230	280	331	413	464
Pickett	218	268	316	394	442	Polk	242	295	347	434	486
Putnam	225	273	321	403	450	Rhea	242	295	347	434	486
Roane	232	286	334	418	468	Scott	197	240	285	354	394

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Smith	218	268	316	394	442
Trousdale	218	268	316	394	442
Warren	225	273	321	403	450
Weakley	218	265	313	392	438
Stewart	201	244	288	360	403
Van Buren	225	273	321	403	450
Wayne	230	280	331	413	464
White	225	273	321	403	450

T E X A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Abilene, TX MSA	294	359	422	528	593	Taylor
Amarillo, TX MSA	272	330	389	485	544	Potter, Randall
Austin, TX MSA	348	418	493	616	690	Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	313	379	447	559	626	Hardin, Jefferson, Orange
Brazoria, TX PMSA	302	367	432	541	605	Brazoria
Brownsville-Harlingen, TX MSA	277	336	395	495	555	Cameron
Bryan-College Station, TX MSA	367	447	524	656	736	Brazos
Corpus Christi, TX MSA	320	388	457	572	641	Nueces, San Patricio
Dallas, TX PMSA	368	448	527	658	737	Collin, Dallas, Denton, Ellis, Kaufman, Rockwall
El Paso, TX MSA	274	331	390	487	547	El Paso
Fort Worth-Arlington, TX PMSA	325	394	464	580	650	Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	282	343	404	505	566	Galveston
Houston, TX PMSA	270	327	385	482	540	Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	270	327	385	481	540	Bell, Coryell
Laredo, TX MSA	254	310	364	456	512	Webb
Longview-Marshall, TX MSA	308	374	440	549	616	Gregg, Harrison
Lubbock, TX MSA	229	287	376	477	526	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	276	335	393	493	553	Hidalgo
Midland, TX MSA	353	430	506	634	709	Midland
Odessa, TX MSA	351	428	503	629	704	Ector
San Angelo, TX MSA	296	361	425	532	597	Tom Green
San Antonio, TX MSA	329	399	470	588	658	Bexar, Comal, Guadalupe
Sherman-Denison, TX MSA	271	328	387	483	542	Grayson
Texarkana, TX-Texarkana, AR MSA	249	302	357	447	500	Bowie
Tyler, TX MSA	312	378	446	557	624	Smith
Victoria, TX MSA	380	461	543	681	762	Victoria
Waco, TX MSA	257	308	362	450	501	Mclennan
Wichita Falls, TX MSA	280	340	402	501	562	Wichita

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T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anderson	236	286	337	421	473
Angelina	275	332	392	491	549
Archer	226	276	324	406	454
Atascosa	242	294	348	436	486
Bailey	228	279	329	408	455
Bastrop	240	291	343	431	482
Bee	260	318	374	466	523
Borden	221	272	319	398	447
Brewster	202	245	287	360	405
Brooks	260	318	374	466	523
Burleson	242	293	346	433	484
Caldwell	240	291	343	431	482
Callahan	234	284	333	417	469
Carson	246	297	351	440	493
Castro	246	297	351	440	493
Cherokee	236	286	337	421	473
Clay	226	276	324	406	454
Coke	211	257	302	379	423
Collingsworth	246	297	351	440	493
Comanche	234	284	333	417	469
Cooke	259	316	372	464	521
Crane	202	245	287	360	405
Crosby	228	279	329	408	455
Dallam	246	297	351	440	493
Deaf Smith	246	297	351	440	493
De Witt	254	310	364	456	512
Dimmit	218	268	315	392	440
Duval	260	318	374	466	523
Edwards	225	276	323	397	442
Falls	207	252	295	372	415
Fayette	240	291	343	431	482
Floyd	228	279	329	408	455
Franklin	249	302	356	447	499
Frio	242	294	348	436	486
Garza	228	279	329	408	455
Glasscock	221	272	319	398	447
Gonzales	254	310	364	456	512
Grimes	242	293	346	433	484
Hall	246	297	351	440	493
Hansford	246	297	351	440	493

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Andrews	202	245	287	360	405
Aransas	260	318	374	466	523
Armstrong	246	297	351	440	493
Austin	279	338	398	499	559
Bandera	242	294	348	436	486
Baylor	226	276	324	406	454
Blanco	221	272	319	398	448
Bosque	207	252	295	372	415
Briscoe	246	297	351	440	493
Brown	228	279	329	408	455
Burnet	221	272	319	398	448
Calhoun	254	310	364	456	512
Camp	216	262	312	388	436
Cass	249	302	356	447	499
Chambers	288	350	412	516	577
Childress	226	276	324	406	454
Cochran	228	279	329	408	455
Coleman	228	279	329	408	455
Colorado	279	338	398	499	559
Concho	211	257	302	379	423
Cottle	226	276	324	406	454
Crockett	211	257	302	379	423
Culberson	202	245	287	360	405
Dawson	221	272	319	398	447
Delta	249	302	356	447	499
Dickens	228	279	329	408	455
Donley	246	297	351	440	493
Eastland	234	284	333	417	469
Erath	234	284	333	417	469
Fannin	259	316	372	464	521
Fisher	234	284	333	417	469
Foard	226	276	324	406	454
Freestone	207	252	295	372	415
Gaines	202	245	287	360	405
Gillespie	242	294	348	436	486
Goliad	254	310	364	456	512
Gray	246	297	351	440	493
Hale	228	279	329	408	455
Hamilton	221	272	319	398	448
Hardeman	226	276	324	406	454

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hartley	246	297	351	440	493
Hemphill	246	297	351	440	493
Hill	257	309	362	454	508
Hood	279	338	398	499	559
Houston	245	296	350	439	492
Hudspeth	202	245	287	360	405
Hutchinson	246	297	351	440	493
Jack	226	276	324	406	454
Jasper	260	318	374	466	523
Jim Hogg	248	299	354	445	497
Jones	234	284	333	417	469
Kendall	242	294	348	436	486
Kent	234	284	333	417	469
Kimble	211	257	302	379	423
Kinney	225	276	323	397	442
Knox	228	279	329	408	455
Lamb	228	279	329	408	455
La Salle	218	268	315	392	440
Lee	240	291	343	431	482
Limestone	207	252	295	372	415
Live Oak	260	318	374	466	523
Loving	202	245	287	360	405
Mcculloch	228	279	329	408	455
Madison	250	302	357	447	500
Martin	221	272	319	398	447
Matagorda	279	338	398	499	559
Medina	242	294	348	436	486
Milam	240	291	343	431	482
Mitchell	234	284	333	417	469
Moore	246	297	351	440	493
Motley	228	279	329	408	455
Navarro	207	252	295	372	415
Nolan	234	284	333	417	469
Oldham	246	297	351	440	493
Panola	236	286	337	421	473
Pecos	202	245	287	360	405
Presidio	202	245	287	360	405
Reagan	211	257	302	379	423
Red River	249	302	356	447	499
Refugio	260	318	374	466	523

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Haskell	234	284	333	417	469
Henderson	236	286	337	421	473
Hockley	228	279	329	408	455
Hopkins	249	302	356	447	499
Howard	221	272	319	398	447
Hunt	259	316	372	464	521
Irion	211	257	302	379	423
Jackson	254	310	364	456	512
Jeff Davis	202	245	287	360	405
Jim Wells	260	318	374	466	523
Karnes	199	242	285	357	399
Kenedy	260	318	374	466	523
Kerr	242	294	348	436	486
King	228	279	329	408	455
Kleberg	260	318	374	466	523
Lamar	249	302	356	447	499
Lampasas	221	272	319	398	448
Lauaca	254	310	364	456	512
Leon	250	302	357	447	500
Lipscomb	246	297	351	440	493
Llano	221	272	319	398	448
Lynn	228	279	329	408	455
Mcmullen	260	318	374	466	523
Marion	216	262	312	388	436
Mason	211	257	302	379	423
Maverick	225	276	323	397	442
Menard	211	257	302	379	423
Mills	228	279	329	408	455
Montague	226	276	324	406	454
Morris	249	302	356	447	499
Nacogdoches	275	332	392	491	549
Newton	260	318	374	466	523
Ochiltree	246	297	351	440	493
Palo Pinto	234	284	333	417	469
Parmer	246	297	351	440	493
Polk	275	332	392	491	549
Rains	224	275	321	396	438
Real	225	276	323	397	442
Reeves	202	245	287	360	405
Roberts	246	297	351	440	493

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Robertson	242	293	346	433	484
Rusk	236	286	337	421	473
San Augustine	215	262	310	388	434
San Saba	228	279	329	408	455
Scurry	234	284	333	417	469
Shelby	215	262	310	388	434
Somervell	207	252	295	372	415
Stephens	234	284	333	417	469
Stonewall	234	284	333	417	469
Swisher	246	297	351	440	493
Terry	228	279	329	408	455
Titus	249	302	356	447	499
Tyler	250	302	357	447	500
Upton	221	272	319	398	447
Val Verde	225	276	323	397	442
Walker	284	346	408	511	571
Washington	250	302	357	447	500
Wheeler	246	297	351	440	493
Willacy	260	318	374	466	523
Winkler	202	245	287	360	405
Wood	216	262	312	388	436
Young	226	276	324	406	454
Zavala	225	276	323	397	442

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Runnels	228	279	329	408	455
Sabine	215	262	310	388	434
San Jacinto	275	332	392	491	549
Schleicher	211	257	302	379	423
Shackleford	234	284	333	417	469
Sherman	246	297	351	440	493
Starr	215	261	309	385	432
Sterling	211	257	302	379	423
Sutton	211	257	302	379	423
Terrell	202	245	287	360	405
Throckmorton	234	284	333	417	469
Trinity	250	315	371	462	519
Upshur	216	262	312	388	436
Uvalde	225	276	323	397	442
Van Zandt	224	275	321	396	438
Ward	202	245	287	360	405
Wharton	279	338	398	499	559
Wilbarger	226	276	324	406	454
Wilson	199	242	285	357	399
Wise	279	338	398	499	559
Yoakum	228	279	329	408	455
Zapata	215	261	309	385	432

U T A H

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Provo-Orem, UT MSA	291	354	415	519	583	Utah
Salt Lake City-Ogden, UT MSA	335	402	475	593	666	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beaver	318	387	456	569	637
Cache	293	356	420	524	588
Daggett	363	441	518	649	727
Emery	363	441	518	649	727
Grand	363	441	518	649	727
Juab	318	387	456	569	637
Millard	318	387	456	569	637
Piute	318	387	456	569	637
San Juan	363	441	518	649	727

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Box Elder	293	356	420	524	588
Carbon	363	441	518	649	727
Duchesne	363	441	518	649	727
Garfield	318	387	456	569	637
Iron	318	387	456	569	637
Kane	318	387	456	569	637
Morgan	363	441	518	649	727
Rich	293	356	420	524	588
Sanpete	318	387	456	569	637

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

U T A H continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sevier	318	387	456	569	637
Tooele	293	356	420	524	588
Wasatch	363	441	518	649	727
Wayne	318	387	456	569	637
Summit	363	441	518	649	727
Uintah	363	441	518	649	727
Washington	348	418	493	615	692

V E R M O N T

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Burlington, VT MSA	424	516	606	758	850	Chittenden county towns of Burlington, Charlotte Colchester, Essex, Hinesburg, Jericho, Milton, Richmond St. George, Shelburne, South Burlington, Williston Winooski Franklin county towns of Georgia Grand Isle county towns of Grand Isle, South Hero

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	340	412	486	606	680	
Bennington	345	424	497	620	699	
Caledonia	290	351	413	517	580	
Chittenden	392	478	563	705	790	Bolton, Buels, Huntington, Underhill, Westford
Essex	290	351	413	517	580	
Franklin	323	392	462	577	646	Bakersfield, Berkshire, Enosburg, Fairfax, Fairfield Fletcher, Franklin, Highgate, Montgomery, Richford St. Albans, St. Albans, Sheldon, Swanton
Grand Isle	290	351	413	517	580	Alburg, Isle La Motte, North Hero
Lamoille	350	425	499	625	700	
Orange	345	420	494	618	692	
Orleans	290	351	413	517	580	
Rutland	376	456	536	670	751	
Washington	345	424	497	620	699	
Windham	363	442	519	649	728	
Windsor	372	451	531	664	744	

V I R G I N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Charlottesville, VA MSA	342	417	490	613	686	Albemarle, Fluvanna, Greene, Charlottesville
Danville, VA MSA	262	318	374	468	524	Pittsylvania, Danville
Johnson City-Kingsport-Bristol, TN-VA MSA	247	300	353	442	496	Scott, Washington, Bristol
Lynchburg, VA MSA	282	350	404	493	565	Amherst, Campbell, Lynchburg
Norfolk-Virginia Beach-Newport News, VA MSA	342	414	485	608	680	Gloucester, James City, York, Chesapeake, Hampton Newport News City, Norfolk, Poquoson, Portsmouth, Suffolk

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

V I R G I N I A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Richmond-Petersburg, VA MSA	313	376	439	551	617	Virginia Beach, Williamsburg City Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights, Hopewell, Petersburg, Richmond
Roanoke, VA MSA	275	334	392	492	551	Botetourt, Roanoke, Roanoke, Salem
Washington, DC-MD-VA MSA	486	591	695	869	973	Arlington, Fairfax, Loudoun, Prince William, Stafford Alexandria, Fairfax, Falls Church City, Manassas Manassas Park City

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Accomack	259	312	363	448	501
Amelia	227	275	323	406	455
Augusta	274	333	391	490	549
Bedford	236	287	339	423	474
Brunswick	214	260	305	383	429
Buckingham	227	275	323	406	455
Carroll	231	280	330	414	463
Clarke	275	334	392	492	551
Culpeper	285	346	409	510	571
Dickenson	244	284	336	420	470
Fauquier	285	346	409	510	571
Franklin	236	287	339	423	474
Giles	273	332	389	487	546
Greensville	214	260	305	383	429
Henry	275	334	392	491	550
Isle Of Wight	221	270	313	391	429
King George	323	393	463	577	649
Lancaster	248	303	358	447	501
Louisa	289	349	409	510	571
Madison	289	349	409	510	571
Mecklenburg	214	260	305	383	429
Montgomery	333	404	474	596	665
Northampton	259	312	363	448	501
Nottoway	227	275	323	406	455
Page	275	334	392	492	551
Prince Edward	227	275	323	406	455
Rappahannock	285	346	409	510	571
Rockbridge	274	333	391	490	549
Russell	262	318	374	468	525
Smyth	231	280	330	414	463
Spotsylvania	323	393	463	577	649

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alleghany	274	333	391	490	549
Appomattox	277	333	389	487	546
Bath	274	333	391	490	549
Bland	231	280	330	414	463
Buchanan	262	318	374	468	525
Caroline	323	393	463	577	649
Charlotte	227	275	323	406	455
Craig	214	260	305	382	428
Cumberland	227	275	323	406	455
Essex	248	303	358	447	501
Floyd	273	332	389	487	546
Frederick	275	334	392	492	551
Grayson	231	280	330	414	463
Halifax	227	275	323	406	455
Highland	274	333	391	490	549
King And Queen	248	303	358	447	501
King William	248	303	358	447	501
Lee	234	284	336	420	470
Lunenburg	227	275	323	406	455
Mathews	248	303	358	447	501
Middlesex	248	303	358	447	501
Nelson	240	291	343	429	481
Northumberland	248	303	358	447	501
Orange	289	349	409	510	571
Patrick	236	287	339	423	474
Pulaski	273	332	389	487	546
Richmond	248	303	358	447	501
Rockingham	274	333	391	490	549
Shenandoah	275	334	392	492	551
Southampton	221	270	313	391	429
Surry	221	270	313	391	429

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sussex	214	260	305	383	429
Warren	275	334	392	492	551
Wise	264	319	376	470	527
Bedford	236	287	339	423	474
Clifton Forge City	274	333	391	490	549
Emporia	214	260	305	383	429
Fredericksburg	323	393	463	577	649
Harrisonburg City	274	333	391	490	549
Martinsville City	275	334	392	491	550
Radford	333	404	474	596	665
Staunton	274	333	391	490	549
Winchester	275	334	392	492	551

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Tazewell	262	318	374	468	525
Westmoreland	248	303	358	447	501
Wythe	250	304	353	437	488
Buena Vista	274	333	391	490	549
Covington	274	333	391	490	549
Franklin	214	260	305	383	429
Galax	231	280	330	414	463
Lexington	274	333	391	490	549
Norton	263	318	375	469	526
South Boston City	227	275	323	406	455
Waynesboro	274	333	391	490	549

W A S H I N G T O N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bellingham, WA MSA	353	432	507	648	713	Whatcom
Bremerton, WA MSA	356	434	509	636	715	Kitsap
Olympia, WA MSA	369	447	527	659	739	Thurston
Richland-Kennewick-Pasco, WA MSA	223	270	319	399	446	Benton, Franklin
Seattle, WA PMSA	351	427	499	645	711	King, Snohomish
Spokane, WA MSA	311	369	435	556	615	Spokane
Tacoma, WA PMSA	303	368	432	563	629	Pierce
Vancouver, WA PMSA	273	332	435	574	637	Clark
Yakima, WA MSA	324	393	463	580	650	Yakima

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	264	321	376	472	529
Chelan	319	386	457	569	639
Columbia	342	414	489	611	685
Douglas	319	386	457	569	639
Garfield	342	414	489	611	685
Grays Harbor	344	417	492	615	690
Jefferson	344	417	492	615	690
Klickitat	320	388	457	572	643
Lincoln	264	321	376	472	529
Okanogan	291	352	416	522	584
Pend Oreille	264	321	376	472	529
Skagit	350	428	502	628	703
Stevens	264	321	376	472	529

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Asotin	342	414	489	611	685
Clallam	344	417	492	615	690
Cowlitz	248	301	354	442	496
Ferry	264	321	376	472	529
Grant	264	321	376	472	529
Island	350	428	502	628	703
Kittitas	291	352	416	522	584
Lewis	320	388	457	572	643
Mason	344	417	492	615	690
Pacific	344	417	492	615	690
San Juan	350	428	502	628	703
Skamania	320	388	457	572	643
Wahkiakum	320	388	457	572	643

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

W A S H I N G T O N continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Walla Walla	342	414	489	611	685
Whitman	342	414	489	611	685

W E S T V I R G I N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Charleston, WV MSA	354	430	507	634	710	Kanawha, Putnam
Cumberland, MD-WV MSA	268	319	373	461	515	Mineral
Huntington-Ashland, WV-KY-OH MSA	292	354	418	523	588	Cabell, Wayne
Parkersburg-Marietta, WV-OH MSA	275	334	393	494	552	Wood
Steubenville-Weirton, OH-WV MSA	282	344	402	505	568	Brooke, Hancock
Wheeling, WV-OH MSA	275	334	394	493	552	Marshall, Ohio

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barbour	254	308	364	456	509
Boone	253	306	362	452	506
Calhoun	294	344	399	519	572
Doddridge	247	302	357	445	499
Gilmer	271	325	394	488	538
Greenbrier	233	283	334	417	468
Hardy	243	297	349	437	490
Jackson	294	344	399	519	572
Lewis	254	308	364	456	509
Logan	244	297	349	437	490
Marion	300	365	429	538	601
Mercer	239	292	344	430	482
Monongalia	300	365	429	538	601
Morgan	243	297	349	437	490
Pendleton	243	297	349	437	490
Pocahontas	233	283	334	417	468
Raleigh	244	294	339	423	475
Ritchie	215	261	306	382	429
Summers	244	294	344	430	482
Tucker	254	308	364	456	509
Upshur	254	308	364	456	509
Wetzel	257	312	368	460	515
Wyoming	244	294	339	423	475

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Berkeley	243	297	349	437	490
Braxton	223	271	318	399	447
Clay	253	306	362	452	506
Fayette	233	283	334	417	468
Grant	243	297	349	437	490
Hampshire	243	297	349	437	490
Harrison	294	344	399	519	572
Jefferson	243	297	349	437	490
Lincoln	244	297	349	437	490
Mcdowell	236	288	338	423	475
Mason	244	297	349	437	490
Mingo	244	297	349	437	490
Monroe	244	294	344	430	482
Nicholas	233	283	334	417	468
Pleasants	215	261	306	382	429
Preston	300	365	429	538	601
Randolph	254	308	364	456	509
Roane	294	344	399	519	572
Taylor	247	302	357	445	499
Tyler	215	261	306	382	429
Webster	233	283	334	417	468
Wirt	215	261	306	382	429

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

W I S C O N S I N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Appleton-Oshkosh-Neenah, WI MSA	275	335	396	494	553	Calumet, Outagamie, Winnebago
Duluth, MN-WI MSA	304	362	427	535	600	Douglas
Eau Claire, WI MSA	272	333	393	489	549	Chippewa, Eau Claire
Green Bay, WI MSA	275	335	398	494	553	Brown
Janesville-Beloit, WI MSA	304	371	437	546	612	Rock
Kenosha, WI PMSA	335	409	480	602	673	Kenosha
La Crosse, WI MSA	326	396	466	582	652	La Crosse
Madison, WI MSA	326	398	474	575	662	Dane
Milwaukee, WI PMSA	330	397	470	588	655	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	375	455	540	675	753	St Croix
Racine, WI PMSA	310	378	445	556	623	Racine
Sheboygan, WI MSA	282	342	404	505	566	Sheboygan
Wausau, WI MSA	275	335	396	494	553	Marathon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	281	340	402	503	564
Barron	267	326	382	479	538
Buffalo	254	307	364	453	510
Clark	267	326	382	479	538
Crawford	241	295	345	434	485
Door	253	304	359	442	494
Florence	241	295	345	434	485
Forest	262	318	374	470	524
Green	262	318	372	463	513
Iowa	253	306	362	451	507
Jackson	254	307	364	453	510
Juneau	281	340	402	503	564
Lafayette	253	306	362	451	507
Lincoln	262	318	374	470	524
Marinette	246	297	347	436	485
Menominee	246	300	353	442	495
Oconto	241	295	345	434	485
Pepin	254	307	364	453	510
Polk	267	326	382	479	538
Price	246	300	353	442	495
Rusk	246	300	353	442	495
Sawyer	246	300	353	442	495
Taylor	246	300	353	442	495
Vernon	241	295	345	434	485
Walworth	294	357	419	524	589

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashland	246	300	353	442	495
Bayfield	246	300	353	442	495
Burnett	246	300	353	442	495
Columbia	257	310	367	458	514
Dodge	257	310	367	458	514
Dunn	267	326	382	479	538
Fond Du Lac	302	365	414	516	564
Grant	253	306	362	451	507
Green Lake	275	335	396	494	553
Iron	246	300	353	442	495
Jefferson	294	357	419	524	589
Kewaunee	253	304	359	442	494
Langlade	262	318	374	470	524
Manitowoc	253	304	359	442	494
Marquette	246	300	353	442	495
Monroe	254	307	364	453	510
Oneida	262	318	374	470	524
Pierce	254	307	364	453	510
Portage	281	340	402	503	564
Richland	253	306	362	451	507
Sauk	280	341	402	502	562
Shawano	246	300	353	442	495
Trempealeau	254	307	364	453	510
Vilas	262	318	374	470	524
Washburn	246	300	353	442	495

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

W I S C O N S I N continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Waupaca	246	300	353	442	495
Wood	281	340	402	503	564
Waushara	246	300	353	442	495

W Y O M I N G

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Casper, WY MSA	407	495	581	728	816	Natrona
Cheyenne, WY MSA	336	407	482	605	675	Laramie

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Albany	260	320	378	472	523
Campbell	260	320	378	472	523
Converse	260	320	378	472	523
Fremont	260	320	378	472	523
Hot Springs	267	325	384	477	535
Lincoln	260	320	378	472	523
Park	267	325	384	477	535
Sheridan	360	441	518	646	728
Sweetwater	260	320	378	472	523
Uinta	260	320	378	472	523
Weston	267	325	384	477	535
Big Horn	267	325	384	477	535
Carbon	260	320	378	472	523
Crook	260	325	384	477	535
Goshen	260	320	378	472	523
Johnson	260	320	378	472	523
Niobrara	260	320	378	472	523
Platte	260	320	378	472	523
Sublette	260	320	378	472	523
Teton	342	412	487	611	686
Washakie	267	325	384	477	535

G U A M

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Guam	424	510	603	754	848

P U E R T O R I C O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Aguadilla, PR MSA	225	275	325	405	455	Aguada, Aguadilla, Isabela, Moca
Arecibo, PR MSA	330	400	470	590	660	Arecibo, Camuy, Hatillo, Quebradillas
Caguas, PR PMSA	275	330	390	490	545	Caguas, Cayey, Cidra, Gurabo, San Lorenzo
Mayaguez, PR MSA	225	275	325	405	455	Anasco, Cabo Rojo, Hormigueros, Mayaguez, San German
Ponce, PR MSA	320	390	460	575	645	Juana Diaz, Ponce
San Juan, PR PMSA	320	390	460	575	645	Bayamon, Barceloneta, Canovanas, Carolina, Catano Corozal, Dorado, Fajardo, Florida, Guaynabo, Humacao Juncos, Las Piedras, Loiza, Luquillo, Manati, Naranjito Rio Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto Vega Alta, Vega Baja

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 051089

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

PUERTO RICO continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adjuntas	215	265	310	390	435
Aibonito	215	265	310	390	435
Barranquitas	215	265	310	390	435
Ciales	215	265	310	390	435
Comerio	215	265	310	390	435
Guanica	215	265	310	390	435
Guayanilla	215	265	310	390	435
Lajas	215	265	310	390	435
Las Marias	215	265	310	390	435
Maunabo	215	265	310	390	435
Naguabo	215	265	310	390	435
Patillas	215	265	310	390	435
Rincon	215	265	310	390	435
Salinas	215	265	310	390	435
Santa Isabel	215	265	310	390	435
Vieques	215	265	310	390	435
Yabucoa	215	265	310	390	435
Aguas Buenas	215	265	310	390	435
Arroyo	215	265	310	390	435
Ceiba	215	265	310	390	435
Coamo	215	265	310	390	435
Culebra	215	265	310	390	435
Guayama	215	265	310	390	435
Jayuya	215	265	310	390	435
Lares	215	265	310	390	435
Maricao	215	265	310	390	435
Morovis	215	265	310	390	435
Orocovis	215	265	310	390	435
Penuelas	215	265	310	390	435
Sabana Grande	215	265	310	390	435
San Sebastian	215	265	310	390	435
Utuado	215	265	310	390	435
Villalba	215	265	310	390	435
Yauco	215	265	310	390	435

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Charlotte Amalie	434	527	620	775	868
St. Thomas	434	527	620	775	868
St. Croix	387	470	553	691	774

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 55

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: ALABAMA	68	78
MSA: Anniston, AL	71	79
MSA: Birmingham, AL	101	111
MSA: Columbus, GA-AL	91	101
MSA: Decatur, AL	68	78
MSA: Dothan, AL	66	75
MSA: Florence, AL	79	85
MSA: Gadsden, AL	71	79
MSA: Huntsville, AL	101	111
MSA: Mobile, AL	80	86
MSA: Montgomery, AL	80	85
MSA: Tuscaloosa, AL	94	107
EXCEPTION COUNTY: LIMESTONE	81	89
EXCEPTION COUNTY: MARSHALL	81	89
NON METRO STATE: ALASKA	159	159
MSA: Anchorage, AK	176	176
EXCEPTION COUNTY: KETCHIKAN	159	168
NON METRO STATE: ARIZONA	99	126
MSA: Phoenix, AZ	138	164
MSA: Tucson, AZ	99	138
NON METRO STATE: ARKANSAS	38	42
MSA: Fayetteville-Springdale, AR	63	67
MSA: Fort Smith, AR-OK	35	38
MSA: Little Rock-North Little Rock, AR	54	56
MSA: Memphis, TN-AR-MS	93	93
MSA: Pine Bluff, AR	28	30
MSA: Texarkana, TX-Texarkana, AR	110	123
EXCEPTION COUNTY: BENTON	53	55
EXCEPTION COUNTY: LITTLE RIVER	88	99
NON METRO STATE: CALIFORNIA	155	203
PMSA: Anaheim-Santa Ana, CA	374	374
MSA: Bakersfield, CA	145	222
MSA: Chico, CA	155	203
MSA: Fresno, CA	222	250
PMSA: Los Angeles-Long Beach, CA	182	305
MSA: Merced, CA	155	203
MSA: Modesto, CA	231	250

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 56

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: Oakland, CA	256	334
PMSA: Oxnard-Ventura, CA	233	352
MSA: Redding, CA	155	203
PMSA: Riverside-San Bernardino, CA	154	253
MSA: Sacramento, CA	179	213
MSA: Salinas-Seaside-Monterey, CA	222	279
MSA: San Diego, CA	267	292
PMSA: San Francisco, CA	274	357
PMSA: San Jose, CA	326	380
MSA: Santa Barbara-Santa Maria-Lompoc, CA	183	279
PMSA: Santa Cruz, CA	238	298
PMSA: Santa Rosa-Petaluma, CA	238	286
MSA: Stockton, CA	231	250
PMSA: Vallejo-Fairfield-Napa, CA	248	283
MSA: Visalia-Tulare-Porterville, CA	155	203
MSA: Yuba City, CA	155	203
EXCEPTION COUNTY: SAN LUIS OBI	212	250
NON METRO STATE: COLORADO	N/A	N/A
PMSA: Boulder-Longmont, CO	218	239
MSA: Colorado Springs, CO	145	164
PMSA: Denver, CO	248	268
MSA: Fort Collins-Loveland, CO	138	155
MSA: Greeley, CO	138	155
MSA: Pueblo, CO	138	155
EXCEPTION COUNTY: ALAMOSA	115	138
EXCEPTION COUNTY: ARCHULETA	138	155
EXCEPTION COUNTY: BACA	115	138
EXCEPTION COUNTY: BENT	115	138
EXCEPTION COUNTY: CHAFFEE	138	155
EXCEPTION COUNTY: CHEYENNE	115	138
EXCEPTION COUNTY: CLEAR CREEK	138	155
EXCEPTION COUNTY: CONEJOS	115	138
EXCEPTION COUNTY: COSTILLA	115	138
EXCEPTION COUNTY: CROWLEY	115	138
EXCEPTION COUNTY: CUSTER	138	155
EXCEPTION COUNTY: DELTA	138	155
EXCEPTION COUNTY: DELORES	138	155
EXCEPTION COUNTY: EAGLE	223	250
EXCEPTION COUNTY: ELBERT	115	138
EXCEPTION COUNTY: FREMONT	138	155
EXCEPTION COUNTY: GARFIELD	223	250
EXCEPTION COUNTY: GILPIN	164	189
EXCEPTION COUNTY: GRAND	138	155
EXCEPTION COUNTY: GUNNISON	138	155

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: HINSDALE	138	155
EXCEPTION COUNTY: HUERFANO	115	138
EXCEPTION COUNTY: JACKSON	138	155
EXCEPTION COUNTY: KIOWA	115	138
EXCEPTION COUNTY: KIT CARSON	115	138
EXCEPTION COUNTY: LAKE	138	155
EXCEPTION COUNTY: LA PLATA	138	155
EXCEPTION COUNTY: LAS ANIMAS	115	138
EXCEPTION COUNTY: LINCOLN	115	138
EXCEPTION COUNTY: LOGAN	115	138
EXCEPTION COUNTY: MESA	138	155
EXCEPTION COUNTY: MINERAL	115	138
EXCEPTION COUNTY: MOFFAT	223	250
EXCEPTION COUNTY: MONTEZUMA	138	155
EXCEPTION COUNTY: MONTROSE	138	155
EXCEPTION COUNTY: MORGAN	115	138
EXCEPTION COUNTY: OTERO	115	138
EXCEPTION COUNTY: OURAY	138	155
EXCEPTION COUNTY: PARK	138	155
EXCEPTION COUNTY: PHILLIPS	115	138
EXCEPTION COUNTY: PITKIN	223	250
EXCEPTION COUNTY: PROWERS	115	138
EXCEPTION COUNTY: RIO BLANCO	223	250
EXCEPTION COUNTY: RIO GRANDE	115	138
EXCEPTION COUNTY: ROUTT	223	250
EXCEPTION COUNTY: SAGUACHE	115	138
EXCEPTION COUNTY: SAN JUAN	138	155
EXCEPTION COUNTY: SAN MIGUEL	138	155
EXCEPTION COUNTY: SEDGWICK	115	138
EXCEPTION COUNTY: SUMMIT	223	250
EXCEPTION COUNTY: TELLER	115	138
EXCEPTION COUNTY: WASHINGTON	115	138
EXCEPTION COUNTY: YUMA	115	138
NON METRO STATE: CONNECTICUT	152	152
PMSA: Bridgeport-Milford, CT	197	197
PMSA: Bristol, CT	152	152
PMSA: Danbury, CT	151	151
PMSA: Hartford, CT	165	165
PMSA: Middletown, CT	165	165
PMSA: New Britain, CT	165	165
MSA: New Haven-Meriden, CT	148	148
MSA: New London-Norwich, CT-RI	141	141
PMSA: Norwalk, CT	186	186
PMSA: Stamford, CT	186	186

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 58

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Waterbury, CT	152	152
NON METRO STATE: DELAWARE	69	69
PMSA: Wilmington, DE-NJ-MD	136	136
NON METRO STATE: DIST. OF COLUMBIA	N/A	N/A
MSA: Washington, DC-MD-VA	185	185
NON METRO STATE: FLORIDA	85	85
MSA: Bradenton, FL	123	123
MSA: Daytona Beach, FL	110	110
PMSA: Fort Lauderdale-Hollywood-Pompano Beach, FL	178	178
MSA: Fort Myers-Cape Coral, FL	115	115
MSA: Fort Pierce, FL	83	83
MSA: Fort Walton Beach, FL	85	85
MSA: Gainesville, FL	85	85
MSA: Jacksonville, FL	79	93
MSA: Lakeland-Winter Haven, FL	85	85
MSA: Melbourne-Titusville-Palm Bay, FL	101	101
PMSA: Miami-Hialeah, FL	141	141
MSA: Naples, FL	85	85
MSA: Ocala, FL	85	85
MSA: Orlando, FL	101	101
MSA: Panama City, FL	85	85
MSA: Pensacola, FL	85	85
MSA: Sarasota, FL	115	115
MSA: Tallahassee, FL	79	79
MSA: Tampa-St. Petersburg-Clearwater, FL	115	115
MSA: West Palm Beach-Boca Raton-Delray Beach, FL	146	146
EXCEPTION COUNTY: BAKER	77	90
EXCEPTION COUNTY: COLUMBIA	85	85
EXCEPTION COUNTY: WAKULLA	77	90
NON METRO STATE: GEORGIA	62	62
MSA: Albany, GA	55	58
MSA: Athens, GA	62	62
MSA: Atlanta, GA	100	108
MSA: Augusta, GA-SC	83	85
MSA: Chattanooga, TN-GA	55	79
MSA: Columbus, GA-AL	91	101
MSA: Macon-Warner Robins, GA	56	61
MSA: Savannah, GA	69	79

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: BRYAN	62	64
EXCEPTION COUNTY: TWIGGS	55	60
NON METRO STATE: HAWAII	N/A	N/A
MSA: Honolulu, HI	N/A	N/A
NON METRO STATE: IDAHO	115	115
MSA: Boise City, ID	124	144
NON METRO STATE: ILLINOIS	110	118
PMSA: Aurora-Elgin, IL	220	237
MSA: Bloomington-Normal, IL	123	123
MSA: Champaign-Urbana-Rantoul, IL	100	100
PMSA: Chicago, IL	233	248
MSA: Davenport-Rock Island-Moline, IA-IL	135	142
MSA: Decatur, IL	135	135
PMSA: Joliet, IL	233	248
MSA: Kankakee, IL	98	98
PMSA: Lake County, IL	220	237
MSA: Peoria, IL	183	201
MSA: Rockford, IL	180	192
MSA: St. Louis, MO-IL	101	117
MSA: Springfield, IL	118	125
NON METRO STATE: INDIANA	60	78
MSA: Anderson, IN	67	67
MSA: Bloomington, IN	63	63
PMSA: Cincinnati, OH-KY-IN	120	126
MSA: Elkhart-Goshen, IN	87	87
MSA: Evansville, IN-KY	80	85
MSA: Fort Wayne, IN	74	100
PMSA: Gary-Hammond, IN	113	130
MSA: Indianapolis, IN	94	108
MSA: Kokomo, IN	87	99
MSA: Lafayette-West Lafayette, IN	81	119
MSA: Louisville, KY-IN	85	93
MSA: Muncie, IN	64	72
MSA: South Bend-Mishawaka, IN	99	104
MSA: Terre Haute, IN	63	78
EXCEPTION COUNTY: ADAMS	60	78
EXCEPTION COUNTY: BLACKFORD	68	78
EXCEPTION COUNTY: GIBSON	60	78

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 60

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: GRANT	68	78
EXCEPTION COUNTY: HENRY	68	78
EXCEPTION COUNTY: JAY	68	78
EXCEPTION COUNTY: MARSHALL	74	78
EXCEPTION COUNTY: RANDOLPH	68	78
EXCEPTION COUNTY: SULLIVAN	61	73
EXCEPTION COUNTY: VERMILLION	61	73
EXCEPTION COUNTY: WAYNE	68	78
EXCEPTION COUNTY: WELLS	60	78
NON METRO STATE: IOWA	94	101
MSA: Cedar Rapids, IA	108	125
MSA: Davenport-Rock Island-Moline, IA-IL	135	142
MSA: Des Moines, IA	116	123
MSA: Dubuque, IA	108	134
MSA: Iowa City, IA	108	123
MSA: Omaha, NE-IA	101	118
MSA: Sioux City, IA-NE	104	104
MSA: Waterloo-Cedar Falls, IA	108	125
NON METRO STATE: KANSAS	83	94
MSA: Kansas City, MO-KS	99	121
MSA: Lawrence, KS	85	97
MSA: Topeka, KS	83	94
MSA: Wichita, KS	97	103
EXCEPTION COUNTY: JEFFERSON	79	91
EXCEPTION COUNTY: OSAGE	79	91
NON METRO STATE: KENTUCKY	75	82
PMSA: Cincinnati, OH-KY-IN	120	126
MSA: Clarksville-Hopkinsville, TN-KY	79	85
MSA: Evansville, IN-KY	80	85
MSA: Huntington-Ashland, WV-KY-OH	90	90
MSA: Lexington-Fayette, KY	94	108
MSA: Louisville, KY-IN	85	93
MSA: Owensboro, KY	86	104
NON METRO STATE: LOUISIANA	80	94
MSA: Alexandria, LA	79	93
MSA: Baton Rouge, LA	93	110
MSA: Houma-Thibodaux, LA	78	91
MSA: Lafayette, LA	85	101

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Lake Charles, LA	91	108
MSA: Monroe, LA	79	93
MSA: New Orleans, LA	98	113
MSA: Shreveport, LA	85	101
EXCEPTION COUNTY: GRANT	77	90
EXCEPTION COUNTY: WEBSTER	80	94
NON METRO STATE: MAINE	135	155
MSA: Bangor, ME	135	155
MSA: Lewiston-Auburn, ME	103	103
MSA: Portland, ME	168	191
MSA: Portsmouth-Dover-Rochester, NH-ME	135	155
NON METRO STATE: MARYLAND	124	124
MSA: Baltimore, MD	196	196
MSA: Cumberland, MD-WV	124	124
MSA: Hagerstown, MD	157	157
MSA: Washington, DC-MD-VA	185	185
PMSA: Wilmington, DE-NJ-MD	136	136
EXCEPTION COUNTY: ST MARYS	170	170
NON METRO STATE: MASSACHUSETTS	165	165
PMSA: Boston, MA	158	171
PMSA: Brockton, MA	158	158
PMSA: Fall River, MA-RI	103	103
MSA: Fitchburg-Leominster, MA	123	123
PMSA: Lawrence-Haverhill, MA-NH	150	160
PMSA: Lowell, MA-NH	150	160
MSA: New Bedford, MA	142	142
PMSA: Pawtucket-Woonsocket-Attleboro, RI-MA	141	141
MSA: Pittsfield, MA	153	153
PMSA: Salem-Gloucester, MA	158	171
MSA: Springfield, MA	121	121
MSA: Worcester, MA	106	106
NON METRO STATE: MICHIGAN	118	131
PMSA: Ann Arbor, MI	170	184
MSA: Battle Creek, MI	101	118
MSA: Benton Harbor, MI	118	131
PMSA: Detroit, MI	166	178
MSA: Flint, MI	144	144
MSA: Grand Rapids, MI	108	117

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 62

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Jackson, MI	118	118
MSA: Kalamazoo, MI	124	127
MSA: Lansing-East Lansing, MI	139	161
MSA: Muskegon, MI	108	110
MSA: Saginaw-Bay City-Midland, MI	125	125
EXCEPTION COUNTY: BARRY	97	113
EXCEPTION COUNTY: IONIA	118	131
EXCEPTION COUNTY: OCEANA	103	105
EXCEPTION COUNTY: SHIAWASSEE	138	138
EXCEPTION COUNTY: VAN BUREN	118	122
NON METRO STATE: MINNESOTA	85	85
MSA: Duluth, MN-WI	87	98
MSA: Fargo-Moorhead, ND-MN	134	150
MSA: Minneapolis-St. Paul, MN-WI	167	167
MSA: Rochester, MN	122	122
MSA: St. Cloud, MN	107	107
EXCEPTION COUNTY: POLK	129	147
NON METRO STATE: MISSISSIPPI	80	94
MSA: Biloxi-Gulfport, MS	93	110
MSA: Jackson, MS	101	123
MSA: Memphis, TN-AR-MS	93	93
MSA: Pascagoula, MS	79	93
EXCEPTION COUNTY: STONE	80	94
NON METRO STATE: MISSOURI	66	73
MSA: Columbia, MO	94	101
MSA: Joplin, MO	66	73
MSA: Kansas City, MO-KS	99	121
MSA: St. Joseph, MO	97	104
MSA: St. Louis, MO-IL	101	117
MSA: Springfield, MO	68	74
EXCEPTION COUNTY: ANDREW	92	99
NON METRO STATE: MONTANA	N/A	N/A
MSA: Billings, MT	172	192
MSA: Great Falls, MT	145	164
EXCEPTION COUNTY: BEAVERHEAD	138	155
EXCEPTION COUNTY: BIG HORN	138	155
EXCEPTION COUNTY: BLAINE	99	115
EXCEPTION COUNTY: BROADWATER	138	155

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: CARBON	138	155
EXCEPTION COUNTY: CARTER	99	115
EXCEPTION COUNTY: CHOUTEAU	99	115
EXCEPTION COUNTY: CUSTER	138	155
EXCEPTION COUNTY: DANIELS	99	115
EXCEPTION COUNTY: DAWSON	138	155
EXCEPTION COUNTY: DEER LODGE	138	155
EXCEPTION COUNTY: FALLON	99	115
EXCEPTION COUNTY: FERGUS	99	115
EXCEPTION COUNTY: FLATHEAD	138	155
EXCEPTION COUNTY: GALLATIN	138	155
EXCEPTION COUNTY: GARFIELD	99	115
EXCEPTION COUNTY: GLACIER	99	115
EXCEPTION COUNTY: GOLDEN VALLE	99	115
EXCEPTION COUNTY: GRANITE	138	155
EXCEPTION COUNTY: HILL	99	115
EXCEPTION COUNTY: JEFFERSON	138	155
EXCEPTION COUNTY: JUDITH BASIN	99	115
EXCEPTION COUNTY: LAKE	138	155
EXCEPTION COUNTY: LEWIS+ CLARK	138	155
EXCEPTION COUNTY: LIBERTY	99	115
EXCEPTION COUNTY: LINCOLN	138	155
EXCEPTION COUNTY: MCCONE	99	115
EXCEPTION COUNTY: MADISON	138	155
EXCEPTION COUNTY: MEAGHER	138	155
EXCEPTION COUNTY: MINERAL	138	155
EXCEPTION COUNTY: MISSOULA	138	155
EXCEPTION COUNTY: MUSSELSHELL	138	155
EXCEPTION COUNTY: PARK	138	155
EXCEPTION COUNTY: PETROLEUM	99	115
EXCEPTION COUNTY: PHILLIPS	99	115
EXCEPTION COUNTY: PONDERA	99	115
EXCEPTION COUNTY: POWDER RIVER	138	155
EXCEPTION COUNTY: POWELL	138	155
EXCEPTION COUNTY: PRAIRIE	99	115
EXCEPTION COUNTY: RAVALLI	138	155
EXCEPTION COUNTY: RICHLAND	99	115
EXCEPTION COUNTY: ROOSEVELT	99	115
EXCEPTION COUNTY: ROSEBUD	138	155
EXCEPTION COUNTY: SANDERS	138	155
EXCEPTION COUNTY: SHERIDAN	99	115
EXCEPTION COUNTY: SILVER BOW	138	155
EXCEPTION COUNTY: STILLWATER	99	115
EXCEPTION COUNTY: SWEET GRASS	99	115
EXCEPTION COUNTY: TETON	99	115
EXCEPTION COUNTY: TOOLE	99	115

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 64

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: TREASURE	138	155
EXCEPTION COUNTY: VALLEY	99	115
EXCEPTION COUNTY: WHEATLAND	99	115
EXCEPTION COUNTY: WIBAUX	99	115
EXCEPTION COUNTY: YL-ST-NT-PK	138	155
NON METRO STATE: NEBRASKA	86	105
MSA: Lincoln, NE	117	123
MSA: Omaha, NE-IA	101	118
MSA: Sioux City, IA-NE	104	104
NON METRO STATE: NEVADA	109	126
MSA: Las Vegas, NV	231	258
MSA: Reno, NV	231	258
NON METRO STATE: NEW HAMPSHIRE	122	135
PMSA: Lawrence-Haverhill, MA-NH	150	160
PMSA: Lowell, MA-NH	150	160
MSA: Manchester, NH	139	152
PMSA: Nashua, NH	171	171
MSA: Portsmouth-Dover-Rochester, NH-ME	135	155
NON METRO STATE: NEW JERSEY	125	125
MSA: Allentown-Bethlehem, PA-NJ	123	123
MSA: Atlantic City, NJ	192	192
PMSA: Bergen-Passaic, NJ	261	262
PMSA: Jersey City, NJ	253	253
PMSA: Middlesex-Somerset-Hunterdon, NJ	297	297
PMSA: Monmouth-Ocean, NJ	228	275
PMSA: Newark, NJ	245	253
PMSA: Philadelphia, PA-NJ	214	214
PMSA: Trenton, NJ	188	188
PMSA: Vineland-Millville-Bridgeton, NJ	166	166
PMSA: Wilmington, DE-NJ-MD	136	136
NON METRO STATE: NEW MEXICO	103	119
MSA: Las Cruces, NM	103	119
MSA: Albuquerque, NM	115	134
MSA: Santa Fe, NM	103	119
EXCEPTION COUNTY: SANDOVAL	109	124
NON METRO STATE: NEW YORK	145	145

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Albany-Schenectady-Troy, NY	181	181
MSA: Binghamton, NY	108	108
PMSA: Buffalo, NY	129	129
MSA: Elmira, NY	116	116
MSA: Glens Falls, NY	145	145
PMSA: Nassau-Suffolk, NY	199	258
PMSA: New York, NY	207	207
PMSA: Niagara Falls, NY	124	124
PMSA: Orange County, NY	143	143
MSA: Poughkeepsie, NY	187	187
MSA: Rochester, NY	165	165
MSA: Syracuse, NY	134	134
MSA: Utica-Rome, NY	136	136
EXCEPTION COUNTY: WESTCHESTER	245	245
NON METRO STATE: NORTH CAROLINA	56	69
MSA: Asheville, NC	79	93
MSA: Burlington, NC	79	93
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	79	93
MSA: Fayetteville, NC	79	93
MSA: Greensboro--Winston-Salem--High Point, NC	79	93
MSA: Hickory, NC	56	69
MSA: Jacksonville, NC	56	69
MSA: Raleigh-Durham, NC	79	93
MSA: Wilmington, NC	79	93
EXCEPTION COUNTY: BRUNSWICK	64	76
EXCEPTION COUNTY: CURRITUCK	101	101
EXCEPTION COUNTY: MADISON	64	76
NON METRO STATE: NORTH DAKOTA	107	123
MSA: Bismarck, ND	151	168
MSA: Fargo-Moorhead, ND-MN	134	150
MSA: Grand Forks, ND	116	143
NON METRO STATE: OHIO	77	77
PMSA: Akron, OH	115	115
MSA: Canton, OH	83	83
PMSA: Cincinnati, OH-KY-IN	120	126
PMSA: Cleveland, OH	123	123
MSA: Columbus, OH	108	125
MSA: Dayton-Springfield, OH	83	83
PMSA: Hamilton-Middletown, OH	97	100
MSA: Huntington-Ashland, WV-KY-OH	90	90

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 66

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Lima, OH	108	108
PMSA: Lorain-Elyria, OH	131	131
MSA: Mansfield, OH	101	101
MSA: Parkersburg-Marietta, WV-OH	90	90
MSA: Steubenville-Weirton, OH-WV	81	81
MSA: Toledo, OH	136	183
MSA: Wheeling, WV-OH	83	83
MSA: Youngstown-Warren, OH	101	101
EXCEPTION COUNTY: CHAMPAIGN	77	78
EXCEPTION COUNTY: OTTAWA	100	134
EXCEPTION COUNTY: PREBLE	77	77
EXCEPTION COUNTY: PUTNAM	81	81
EXCEPTION COUNTY: VAN WERT	81	81
NON METRO STATE: OKLAHOMA	77	83
MSA: Enid, OK	77	83
MSA: Fort Smith, AR-OK	35	38
MSA: Lawton, OK	78	85
MSA: Oklahoma City, OK	80	88
MSA: Tulsa, OK	85	93
EXCEPTION COUNTY: LE FLORE	34	37
EXCEPTION COUNTY: MAYES	77	83
NON METRO STATE: OREGON	146	155
MSA: Eugene-Springfield, OR	172	178
MSA: Medford, OR	146	155
PMSA: Portland, OR	193	214
MSA: Salem, OR	172	178
NON METRO STATE: PENNSYLVANIA	87	87
MSA: Allentown-Bethlehem, PA-NJ	123	123
MSA: Altoona, PA	113	113
PMSA: Beaver County, PA	91	91
MSA: Erie, PA	113	113
MSA: Harrisburg-Lebanon-Carlisle, PA	128	128
MSA: Johnstown, PA	113	113
MSA: Lancaster, PA	117	117
PMSA: Philadelphia, PA-NJ	214	214
PMSA: Pittsburgh, PA	95	95
MSA: Reading, PA	117	117
MSA: Scranton--Wilkes-Barre, PA	104	104
MSA: Sharon, PA	87	87
MSA: State College, PA	87	87

NOTE TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Williamsport, PA	87	87
MSA: York, PA	117	117
EXCEPTION COUNTY: SUSQUEHANNA	87	87
NON METRO STATE: RHODE ISLAND	135	135
PMSA: Fall River, MA-RI	103	103
MSA: New London-Norwich, CT-RI	141	141
PMSA: Pawtucket-Woonsocket-Attleboro, RI-MA	141	141
PMSA: Providence, RI	141	141
NON METRO STATE: SOUTH CAROLINA	62	62
MSA: Anderson, SC	62	62
MSA: Augusta, GA-SC	83	85
MSA: Charleston, SC	79	79
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	79	93
MSA: Columbia, SC	69	79
MSA: Florence, SC	62	62
MSA: Greenville-Spartanburg, SC	69	69
NON METRO STATE: SOUTH DAKOTA	91	107
MSA: Rapid City, SD	91	107
MSA: Sioux Falls, SD	128	144
NON METRO STATE: TENNESSEE	62	62
MSA: Chattanooga, TN-GA	55	79
MSA: Clarksville-Hopkinsville, TN-KY	79	85
MSA: Jackson, TN	62	62
MSA: Johnson City-Kingsport-Bristol, TN-VA	85	85
MSA: Knoxville, TN	69	69
MSA: Memphis, TN-AR-MS	93	93
MSA: Nashville, TN	93	110
NON METRO STATE: TEXAS	67	83
NON METRO STATE: TEXAS	67	83
MSA: Abilene, TX	58	65
MSA: Amarillo, TX	108	113
MSA: Austin, TX	98	115
MSA: Beaumont-Port Arthur, TX	101	115
PMSA: Brazoria, TX	102	119

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 68

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Brownsville-Harlingen, TX	79	93
MSA: Bryan-College Station, TX	98	110
MSA: Corpus Christi, TX	83	110
PMSA: Dallas, TX	79	101
MSA: El Paso, TX	112	126
PMSA: Fort Worth-Arlington, TX	79	101
PMSA: Galveston-Texas City, TX	99	111
PMSA: Houston, TX	105	123
MSA: Killeen-Temple, TX	101	110
MSA: Laredo, TX	69	85
MSA: Longview-Marshall, TX	93	107
MSA: Lubbock, TX	107	110
MSA: Mc Allen-Edinburg-Mission, TX	91	110
MSA: Midland, TX	110	115
MSA: Odessa, TX	110	115
MSA: San Angelo, TX	93	101
MSA: San Antonio, TX	79	93
MSA: Sherman-Denison, TX	85	101
MSA: Texarkana, TX-Texarkana, AR	110	123
MSA: Tyler, TX	85	90
MSA: Victoria, TX	67	83
MSA: Waco, TX	88	101
MSA: Wichita Falls, TX	62	69
EXCEPTION COUNTY: CALLAHAN	57	63
EXCEPTION COUNTY: CLAY	61	67
EXCEPTION COUNTY: HOOD	70	88
EXCEPTION COUNTY: JONES	57	63
EXCEPTION COUNTY: WISE	70	88
NON METRO STATE: UTAH	N/A	N/A
MSA: Provo-Orem, UT	138	155
MSA: Salt Lake City-Ogden, UT	155	172
EXCEPTION COUNTY: BEAVER	99	115
EXCEPTION COUNTY: BOX ELDER	99	115
EXCEPTION COUNTY: CACHE	99	115
EXCEPTION COUNTY: CARBON	138	155
EXCEPTION COUNTY: DAGGETT	99	115
EXCEPTION COUNTY: DUCHESNE	99	115
EXCEPTION COUNTY: EMERY	138	155
EXCEPTION COUNTY: GARFIELD	99	115
EXCEPTION COUNTY: GRAND	138	155
EXCEPTION COUNTY: IRON	99	115
EXCEPTION COUNTY: JUAB	99	115
EXCEPTION COUNTY: KANE	99	115
EXCEPTION COUNTY: MILLARD	99	115

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: MORGAN	99	115
EXCEPTION COUNTY: PIUTE	99	115
EXCEPTION COUNTY: RICH	99	115
EXCEPTION COUNTY: SAN JUAN	99	115
EXCEPTION COUNTY: SANPETE	99	115
EXCEPTION COUNTY: SEVIER	99	115
EXCEPTION COUNTY: SUMMIT	99	115
EXCEPTION COUNTY: TOOELE	108	120
EXCEPTION COUNTY: UINTAH	138	155
EXCEPTION COUNTY: WASATCH	99	115
EXCEPTION COUNTY: WASHINGTON	99	115
EXCEPTION COUNTY: WAYNE	99	115
NON METRO STATE: VERMONT	126	146
MSA: Burlington, VT	152	174
EXCEPTION COUNTY: CHITTENDEN	153	176
EXCEPTION COUNTY: FRANKLIN	130	150
EXCEPTION COUNTY: GRAND ISLE	143	164
EXCEPTION COUNTY: ORANGE	141	163
EXCEPTION COUNTY: WASHINGTON	145	168
EXCEPTION COUNTY: WINDHAM	187	215
EXCEPTION COUNTY: WINDSOR	201	230
NON METRO STATE: VIRGINIA	88	88
MSA: Charlottesville, VA	88	88
MSA: Danville, VA	88	88
MSA: Johnson City-Kingsport-Bristol, TN-VA	85	85
MSA: Lynchburg, VA	79	79
MSA: Norfolk-Virginia Beach-Newport News, VA	125	125
MSA: Richmond-Petersburg, VA	123	123
MSA: Roanoke, VA	85	85
MSA: Washington, DC-MD-VA	185	185
EXCEPTION COUNTY: APPOMATTOX	77	77
EXCEPTION COUNTY: CRAIG	83	83
NON METRO STATE: WASHINGTON	126	146
MSA: Bellingham, WA	126	163
MSA: Bremerton, WA	126	163
MSA: Olympia, WA	126	163
MSA: Richland-Kennewick-Pasco, WA	172	172
PMSA: Seattle, WA	161	227
MSA: Spokane, WA	138	155
PMSA: Tacoma, WA	144	170

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 70

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: Vancouver, WA	180	198
MSA: Yakima, WA	138	145
NON METRO STATE: WEST VIRGINIA	85	85
MSA: Charleston, WV	93	93
MSA: Cumberland, MD-WV	124	124
MSA: Huntington-Ashland, WV-KY-OH	90	90
MSA: Parkersburg-Marietta, WV-OH	90	90
MSA: Steubenville-Weirton, OH-WV	81	81
MSA: Wheeling, WV-OH	83	83
EXCEPTION COUNTY: WIRT	83	83
NON METRO STATE: WISCONSIN	94	101
MSA: Appleton-Oshkosh-Neenah, WI	118	125
MSA: Duluth, MN-WI	87	98
MSA: Eau Claire, WI	110	119
MSA: Green Bay, WI	116	123
MSA: Janesville-Beloit, WI	116	123
PMSA: Kenosha, WI	127	137
MSA: La Crosse, WI	104	114
MSA: Madison, WI	174	182
PMSA: Milwaukee, WI	135	143
MSA: Minneapolis-St. Paul, MN-WI	167	167
PMSA: Racine, WI	127	134
MSA: Sheboygan, WI	94	101
MSA: Wausau, WI	94	101
NON METRO STATE: WYOMING	N/A	N/A
MSA: Casper, WY	231	250
MSA: Cheyenne, WY	138	165
EXCEPTION COUNTY: ALBANY	138	165
EXCEPTION COUNTY: BIG HORN	138	165
EXCEPTION COUNTY: CAMPBELL	231	250
EXCEPTION COUNTY: CARBON	231	250
EXCEPTION COUNTY: CONVERSE	231	250
EXCEPTION COUNTY: CROOK	138	165
EXCEPTION COUNTY: FREMONT	231	250
EXCEPTION COUNTY: GOSHEN	138	165
EXCEPTION COUNTY: HOT SPRINGS	138	165
EXCEPTION COUNTY: JOHNSON	138	165
EXCEPTION COUNTY: LARAMIE	138	165
EXCEPTION COUNTY: LINCOLN	138	165
EXCEPTION COUNTY: PARK	138	165

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: PLATTE	138	165
EXCEPTION COUNTY: SHERIDAN	231	250
EXCEPTION COUNTY: SUBLETTE	138	165
EXCEPTION COUNTY: SWEETWATER	231	250
EXCEPTION COUNTY: TETON	138	165
EXCEPTION COUNTY: UINTA	138	165
EXCEPTION COUNTY: WASHAKIE	138	165
EXCEPTION COUNTY: WESTON	138	165

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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[FR Doc 89–11956 Filed 5–18–89 8:45 am]
BILLING CODE 4210–27–C

federal register

Friday
May 19, 1989

Part IV

Federal Emergency Management Agency

44 CFR Parts 59 and 60

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Mobile Home Parks or Subdivisions; Modification of Suspension of Rule and Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 60

RIN 3067-AB25

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Mobile Home Parks or Subdivisions

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Modification of suspension of rule.

SUMMARY: This notice modifies a notice published in the **Federal Register** on July 6, 1988 (53 FR 25332). That notice modified a notice published in the **Federal Register** on June 30, 1987, (52 FR 24370) which suspended certain revisions to National Flood Insurance Program (NFIP) regulations which became effective on October 1, 1986 (51 FR 30290, Aug. 25, 1986), and restored prior provisions of the regulations through March 31, 1988. The suspended provisions required the elevation of manufactured homes placed or substantially improved in existing mobile home parks and subdivisions in special flood hazard areas. The July 6, 1988, notice extended the suspension of these revisions through July 31, 1989 to allow FEMA sufficient time to complete an analysis of the issue and any necessary rulemaking. This notice further extends the suspension of the revisions through September 30, 1989 to allow FEMA sufficient time to complete this rulemaking. A proposed rule which revises the suspended provisions is published elsewhere in this issue.

EFFECTIVE DATE: The regulations published on August 25, 1986, (51 FR 30290) are further suspended until September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Michael F. Robinson, Federal Emergency Management Agency (FEMA), Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone number (202) 646-2717.

SUPPLEMENTARY INFORMATION: On June 30, 1987, the Federal Emergency Management Agency (FEMA) published a notice in the **Federal Register** (52 FR 24370) which suspended until March 31, 1988, a portion of a revision to National Flood Insurance Program (NFIP) criteria which became effective on October 1, 1986. The portion of the revision that was suspended required the elevation of manufactured homes placed or substantially improved in existing mobile home parks and subdivisions (those established prior to the adoption of a community's floodplain management regulations). Subsequent to this publication, the Supplemental Appropriations Act of 1987 (Pub. L. 100-71) was signed into law on July 11, 1987. This Act suspended the same provision through September 30, 1988. In order to make the June 30, 1987, notice consistent with the Supplemental Appropriations Act, FEMA published a notice in the **Federal Register** on September 3, 1987 (52 FR 33410) that modified the effective date of the suspension to read "through September 30, 1988". The September 3, 1987 notice also made several technical corrections to the June 30, 1988 notice. The suspension was further extended through July 31, 1989, in a **Federal Register** notice published on July 6, 1988 (53 FR 25332).

FEMA is hereby modifying the July 6, 1988 **Federal Register** notice to extend the suspension of the provision through September 30, 1989 rather than through July 31, 1989. FEMA has published a proposed rule elsewhere in this issue which proposes to replace the suspended revisions. The extension allows sufficient time for the conduct of a comment period for this proposed rule and the publication of a final rule prior to the expiration of the suspension.

Modification of Suspension of Rule

In the "Modification of suspension of rule" (FR document 88-15093) beginning on page 25332 in the **Federal Register** of Wednesday, July 6, 1988, make the following modification: 1. On page 25332 in the third column under Modification change "July 31, 1989" to read "September 30, 1989".

Dated: May 12, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-11990 Filed 5-18-89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 60

RIN 3067-AB25

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Manufactured Home Parks and Subdivisions

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the National Flood Insurance Program (NFIP) floodplain management criteria that are applicable to the placement or substantial improvement of manufactured homes in existing manufactured home parks and subdivisions in flood hazard areas and also the requirements applicable to recreational vehicles. The proposed rule would replace provisions that became effective on October 1, 1986 (51 FR 30290, Aug. 25, 1986), but that were suspended by a notice published in the **Federal Register** on June 30, 1987 (52 FR 24370). That suspension is being extended through September 30, 1989, by a rule published elsewhere in this issue, to allow sufficient time for a final rule to be published and become effective.

DATES: Comments must be received on or before July 18, 1989.

ADDRESSES: Send comments to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Michael F. Robinson, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington DC 20472; telephone number (202) 646-2717.

SUPPLEMENTARY INFORMATION: This proposed rule would revise National Flood Insurance Program (NFIP) floodplain management criteria on placement and substantial improvement of manufactured homes on sites in existing manufactured home parks and subdivisions. It would replace provisions that became effective on October 1, 1986, but which were subsequently suspended by FEMA in a June 30, 1987 **Federal Register** notice and later by the Supplemental Appropriations Act of 1987 (Pub. L. 100-71). In addition, provisions are included regarding the application of these requirements to certain recreational vehicles. Prior to developing this proposed rule, FEMA reviewed the comments submitted in response to the June 30, 1987 **Federal Register** notice, conducted further research into the impacts of flooding on existing manufactured home parks and subdivisions, and developed a report for Congress entitled "National Flood Insurance Program: Report on Existing Manufactured Home Parks and Subdivisions". That report concluded that there were alternatives to the October 1, 1986 rule revision that would reduce the adverse economic impacts on the owners and residents of existing manufactured home parks and subdivisions, yet still achieve the NFIP objectives of reducing flood damages and threats to public safety. After submitting that report to Congress in September of 1988, FEMA met with a task force chaired by the National Manufactured Housing Federation which made additional recommendations to FEMA in February of 1989. The proposed rule contains elements of both the alternative developed by FEMA in its report for Congress and the recommendations of that task force.

Background

In order to participate in the NFIP, communities are required to adopt floodplain management regulations that either meet or exceed minimum criteria established by the FEMA. These criteria generally require that residential structures including manufactured homes have their lowest floors elevated to or above the 100-year or base flood elevation. In NFIP rule revisions which became effective on December 31, 1976, a special exception was made to allow for the new placement, replacement, or substantial improvement of manufactured homes in existing manufactured home parks and subdivisions without meeting this general elevation requirement. Existing manufactured home parks and subdivisions are those for which the infrastructure servicing the individual manufactured home sites was in place prior to the adoption of floodplain management regulations by a community. This provision has commonly been referred to as the "grandfathering" of existing manufactured home parks and subdivisions.

In the early 1980's, Interagency Hazard Mitigation Teams, chaired by FEMA and mobilized after a Presidentially declared flood disaster, began identifying instances where existing manufactured home parks were being destroyed or extensively damaged by floods. A number of these teams, when confronted with the severity of these damages, specifically recommended that FEMA or the local unit of government amend its floodplain management regulations to end the "grandfathering" of these manufactured home parks to prevent future reoccurrences of this damage.

On December 13, 1982, an Advance Notice of Proposed Rulemaking (ANPR) was published in the **Federal Register** (47 FR 55752) which, in part, requested comments on actions that FEMA could take to remove distinctions in NFIP regulations between the treatment of manufactured homes and that of other forms of housing. Generally, the comments received in response to this notice favored such an action. In September of 1985, FEMA published a manual entitled "Manufactured Home Installation in Flood Hazard Areas". As a result of the research that was conducted in the preparation of this manual, FEMA concluded that it was feasible to properly elevate manufactured homes under most conditions even in the narrow confines of an existing manufactured home park or subdivision.

Based on recommendations from the Hazard Mitigation Teams, the results of its research on manufactured home installation, comments received in response to the ANPR, and other information available at the time, FEMA proceeded with a series of comprehensive revisions to NFIP criteria applying to manufactured homes. Revisions replacing specific tie-down and installation standards with general performance standards became effective on January 1, 1986.

On March 28, 1986, FEMA published a proposed rule in the **Federal Register** (51 FR 10742) which would (1) substitute the term "manufactured home" in place of "mobile home", (2) define "manufactured home" to include for floodplain management purposes certain recreational vehicles, (3) remove prohibitions on the placement of manufactured homes in floodways and coastal high hazard areas (V-zones), and (4) require the elevation of manufactured homes placed or substantially improved in existing manufactured home parks and subdivisions. The overall effect of these revisions would have been to remove nearly all distinctions in NFIP criteria between the requirements that applied to manufactured homes and those which applied to conventional housing. Although copies of the proposed rule were sent to over 17,000 participating communities, only a few comments were

received. The few comments from the manufactured home community supported most of the changes, but expressed some concern over the end of "grandfathering" of existing manufactured home parks and subdivisions. A final rule was then published in the **Federal Register** (51 FR 30290) which became effective on October 1, 1986. This final rule is referred to in this discussion as the October 1, 1986 rule revision.

As communities began incorporating the October 1, 1986 rule revision into their local floodplain management regulations, owners of existing manufactured home parks and of individual manufactured homes became more aware of the elevation requirements. Associations representing the manufactured home community requested that FEMA suspend that portion of the rule revision and to provide additional opportunities for comment and analysis of the impacts of such a requirement.

FEMA suspended the provision in a June 30, 1987 **Federal Register** notice. The notice also requested comments on the impacts of the October 1, 1986 rule revision and on possible alternative actions that would reduce flood damages, but minimize the impacts of those regulations. On July 11, 1987, the Supplemental Appropriations Act (Pub. L. 100–71) was signed into law, suspending the provision through September 30, 1988 to allow sufficient time for readdressing this issue. FEMA subsequently extended the suspension through July 30, 1989 (53 FR 25332, July 6, 1988).

FEMA's Report on Existing Manufactured Home Parks and Subdivisions

Based on its review of the 1,407 comment letters that were submitted to the Rules Docket established for the June 30, 1987 **Federal Register** notice and independent studies of the issue, FEMA completed a report in September of 1988 entitled "National Flood Insurance Program: Existing Manufactured Home Parks and Subdivisions" for the House of Representatives Appropriations Subcommittee on HUD-Independent Agencies. The report included: (1) An analysis of the impacts of flooding on existing manufactured home parks and subdivisions, (2) an analysis of the impacts of requiring elevation to or above the base flood elevation of all manufactured homes placed therein, and (3) an examination of alternatives to the October 1, 1986 rule revision.

The report estimated that there were approximately $500 million in flood losses to manufactured homes and their contents over the 10 year period from 1978 through 1987. Approximately $250 million of this damage can be attributed to manufactured homes located in existing manufactured home parks and subdivisions. Federal costs associated with these losses included $29.7 million in flood insurance claims payments and approximately $100 million in disaster assistance including providing Temporary Housing for flood victims, Individual and Family Grants, and Small Business Administration (SBA) disaster loans. Other Federal costs such as defaults on Federally guaranteed or insured loans on these manufactured homes due to flood damages, the Federal share of constructing flood control projects, lost revenues as a result of casualty loss deductions on Federal income taxes, disaster assistance for the repair of related public infrastructure, and public expenditures for rescue efforts and flood fighting could not be quantified, but are believed to be significant.

The report further stated that, despite the availability of flood insurance from the NFIP and private insurers and disaster assistance, a major portion of the cost of these flood losses will be borne by the owners and residents of existing manufactured home parks. Costs to owners of existing manufactured home parks include the repair of damages to roads, utilities, manufactured home pads, landscaping and support buildings and the loss of income from the affected sites until they can be repaired and rented. The report concludes that owners and occupants of individual manufactured homes are not likely to be fully reimbursed for their flood losses even if the manufactured homes and their contents are insured through the NFIP or a private insurer of manufactured homes. Those who are not insured are dependent on disaster assistance programs which are likely to reimburse them for only a small percentage of their loss. Of particular concern are retired persons on fixed incomes and other low income persons who often live in manufactured homes who are less likely than the population as a whole to be able to fully recover financially from serious flood losses.

More importantly, the report determines that there are significant public safety concerns that must be addressed. Although in coastal areas subject to hurricanes most residents are normally evacuated upon the issuance of a hurricane warning, this is not always possible for flooding that occurs along rivers and streams. FEMA identified a number of instances where lives were lost as a result of the flooding of existing manufactured home parks. In similar situations loss of life was avoided only through the heroic actions of emergency management personnel who placed their own lives in jeopardy.

The report also analyzed the economic impacts on owners and residents of existing manufactured home parks and subdivisions that would result if the October 1, 1986 rule revision requiring that the lowest floor of manufactured homes be at or above the 100-year or base flood elevation was implemented. The report concluded that there were approximately 40,000 sites in existing manufactured home parks and subdivisions that were subject to moderate or deep flooding (flood depths of greater than 3 feet) that could potentially be affected by the elevation requirement. Elevating these manufactured homes would generally require use of foundation systems other than standard manufactured home installations. FEMA estimates that the elevation requirement would apply to approximately 8 percent of these sites in any given year. Costs of elevating these manufactured homes would range from $400 to $8,000 in addition to the costs of a standard installation depending on the depth of flooding at the site and the elevation technique used. Approximately 126,000 additional sites are located in flood hazard areas, but are subject to shallow flooding (flood depths of 3 feet or less). These sites would not be affected since elevation requirements could be met using standard manufactured home installations.

Discussed in FEMA's report for Congress are the concerns expressed by representatives of the manufactured home community who believe that, for a number of reasons, it is not practicable to require elevation to or above the base flood elevation of manufactured homes placed in existing manufactured home parks and subdivisions. These persons believe that requiring elevation would ultimately lead to the closure of many of these parks and subsequent loss of affordable housing. Rather than meet elevation requirements, they believe that manufactured home owners would choose to locate on manufactured home park sites outside of the floodplain if available. This reluctance to elevate would be due to aesthetics, practical difficulties in elevating manufactured homes in the narrow confines of many existing parks, the reluctance of many persons, particularly the elderly, to climb stairs, and the added cost of an elevated manufactured home installation given the low incomes of many manufactured home owners. FEMA notes that most of these same

arguments were raised in opposition to elevation requirements for other types of residential construction during the initial years of the NFIP. Since that time the housing industry and the general public have adapted to the elevation requirement and it has become an accepted and prudent construction practice.

However, one important way in which manufactured home parks are unique from other forms of residential construction is the split in ownership between the lot and the manufactured home. Renters of sites are reluctant to make substantial capital investments in the site due to their uncertain tenure, particularly since the value of any improvements would accrue to the owner of the manufactured home park and not the manufactured home owner. Manufactured home park owners have indicated that they are reluctant to make this capital investment due to the added cost for upgrading sites, costs that they do not believe can be passed on to tenants through rent increases. In addition, they anticipate resistance by prospective tenants to living in elevated manufactured homes and opposition from current tenants to elevating manufactured homes on neighboring sites.

While many existing manufactured home parks will have only a few sites affected or will be able to otherwise adjust to such a requirement, some manufactured home parks would be severely impacted if elevation continued to be required. These parks would include those with a high percentage of sites subject to moderate or deep flooding, a high rate of turnover of sites, a high percentage of sites currently vacant, high debt servicing costs in relation to rental income generated, no alternative locations for manufactured home sites on the property, and/or no alternative economic uses of the land. The timing of the impacts would vary since the requirement is not retroactive and would only apply as sites became vacant. Existing manufactured home parks with low turnover rates might remain profitable for many years even if they were subject to moderate or deep flooding. For other existing manufactured home parks, the owner would have to choose whether to upgrade a site when it becomes vacant, relocate the site to elsewhere on the property, or leave the site vacant and forego the rental income.

Ultimately, in extreme cases where the decision is made to leave all or most sites vacant, rental income eventually would become insufficient to pay for debt servicing and operation costs while still providing a profit to the owner. At this point the park would likely be closed and either (1) sold for operation with fewer sites, (2) converted to another use which would generate higher income, or (3) allowed to go into foreclosure. When this occurs, the renters of individual sites would have to relocate to a different manufactured home park at a cost of several thousands of dollars, provided that a suitable vacant site could be found. This future uncertainty likely would be reflected in lowered property values of both the manufactured home park and individual manufactured homes many years prior to actual closure.

FEMA believes that a relatively small number of otherwise economically healthy manufactured home parks would actually have closed if elevation requirements continued to be in effect. Many existing manufactured home parks are subject to shallow flooding or have only a few sites subject to moderate or deep flooding. In addition, there are ways individual existing manufactured home parks could have adapted to an elevation requirement. However, the report indicated that this possible outcome was of sufficient concern to warrant the consideration of alternatives that would minimize these occurrences or provide additional opportunities for owners of existing manufactured home parks to adjust to an elevation requirement. The only way to fully protect the economic interests of the owners of existing manufactured home parks and of individual manufactured homes currently located in these parks would be to continue the "grandfathering". To do so would jeopardize the lives and property of prospective residents of the park who are not currently at risk.

In an effort to balance these conflicting concerns, FEMA developed a selected alternative outlined in the report for Congress. This selected alternative was designed to reduce the economic impacts on the owners and residents of existing manufactured homes, yet still achieve the NFIP objectives of reducing flood damages and threats to public safety. The selected alternative in FEMA's report includes the following components:

1. All manufactured homes placed or substantially improved on a site in an existing manufactured home park or subdivision where a manufactured home had been substantially damaged by a flood would be required to be elevated so that the lowest floor of the manufactured home was at or above the 100-year or base flood elevation. These sites tend to be those subject to the severest and most frequent flood conditions.

2. After a ten year period ending on October 1, 1999, all remaining sites in existing manufactured home parks and subdivisions would also become subject to the elevation requirement. The substantial damage requirement in item 1 and natural attrition during this period would significantly reduce the numbers of sites affected and, thus, the severity of any impacts.

3. The definition of "manufactured home" would be revised to allow communities the option of excluding a recreational vehicle from the definition and the application of floodplain management requirements if the vehicle is fully licensed and ready for highway use.

4. A requirement previously at 44 CFR 60.3(b)(9) that emergency evacuation plans be established by communities to assure that the residents of manufactured home parks and subdivisions are evacuated to safe areas after a flood warning would be restored.

5. Maximum use would be made of the proposed NFIP Community Rating System to encourage a variety of actions by communities to address the problem.

Subsequent to the completion of the report, FEMA met with a task force organized and chaired by the National Manufactured Housing Federation (NMHF). Also included on the task force were representatives of the Manufactured Housing Institute, two manufactured home owners associations, and the Association of State Floodplain Managers, a private insurer of manufactured homes, and a local official. This task force met in November of 1988 and February of 1989 to discuss the impacts of various alternatives and develop recommendations submitted to FEMA for consideration.

The NMHF task force adopted the following recommendations by majority vote:

1. In V-zones and floodways, items 1 and 2 of the selected alternative in FEMA's report should be applied to sites in existing manufactured home parks and subdivisions. In addition, FEMA should encourage local governments to use block grants and other measures to relocate sites and manufactured homes from these areas.

2. Outside of V-zones and floodways, items 1 and 2 of the selected alternative in FEMA's report should be applied to sites in existing manufactured home parks which can comply using a standard installation (36 inch load bearing piers).

3. Outside of V-zones and floodways, manufactured homes placed in existing manufactured home parks which cannot meet the base flood elevation requirement using the 36 inch pier should at a minimum still be elevated on the 36 inch pier to reduce the frequency of flood damages. (The recommendation did not specify whether this was to be implemented immediately or through items 1 and 2 of the selected alternative.)

4. The severity of the flood hazard should be fully disclosed to owners of manufactured homes who rent sites in designated floodplains.

5. FEMA should encourage escrowing or payment plans to make flood insurance affordable to low income manufactured home owners.

6. The word "internal" should be deleted from that portion of the definition of "manufactured home" in FEMA's report dealing with "recreational vehicle" jacking systems.

7. The impacts of the adopted regulations should be reevaluated in 1999.

The task force members representing the manufactured home community generally believed that the elevation of a manufactured home higher than on a standard installation was not practicable due to the attitudes of manufactured home owners who rent sites and the problems related to the split ownership of the manufactured home and the site. They also believed that ending the "grandfathering" in 10 years as provided for in the selected alternative in FEMA's report would have immediate severe adverse economic impacts on the manufactured home park owners and on owners of manufactured homes currently in those parks. This provision introduces a high degree of uncertainty into the future of some manufactured home parks and may preclude the financing or refinancing of the park itself as well as the financing of individual manufactured homes on sites therein. As evidenced by their recommendations, these task force members were willing to concede that these impacts might be acceptable in readily identifiable high hazard areas such as in V-zones and floodways. This set of recommendations was not fully supported by the representatives of the Association of State Floodplain Managers that were on the task force.

Requirements for Existing Manufactured Home Parks and Subdivisions

FEMA has developed provisions for this proposed rule which combine portions of both the selected alternative in FEMA's report to Congress and the NMHF task force recommendations. FEMA believes that this approach will minimize adverse economic impacts on the manufactured home community while at the same time substantially achieving the NFIP objectives of reducing losses of life and property due to flooding.

For existing manufactured home parks and subdivisions, the proposed rule contains three basic provisions. First, communities would be required to develop or have developed evacuation plans for residents of existing manufactured home parks and subdivisions. Second, manufactured homes placed or substantially improved on sites in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood would be required to be elevated to or above the base flood elevation. Third, all other manufactured homes placed or substantially improved in these existing manufactured home parks and subdivisions would have to be elevated on reinforced piers or other foundation elements that are no less than 36 inches in height above grade or have their lowest floor at or above the base flood elevation if this allows for the use of a lower foundation.

In support of these requirements, definitions of "existing manufactured home park or subdivision", "expansion to an existing manufactured home park or subdivision", and "new manufactured home park or subdivision" would be permanently added to 44 CFR 59.1. These definitions are the same as are currently in effect under the suspension notice published in the **Federal Register** on June 30, 1987 (52 FR 24370). They closely parallel those definitions used to implement the "grandfathering" of an "existing mobile home park or mobile home subdivision" in NFIP criteria that were in effect prior to the October 1, 1986 rule revision. "Existing manufactured home park or subdivision" continues to be defined as a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed are completed prior to the effective date of the floodplain management regulations adopted by the community.

The first of the three basic provisions of the proposed rule would require that a plan for evacuating the residents of existing manufactured home parks or subdivisions be developed and filed with and approved by appropriate community emergency management authorities. The purpose of this requirement is to reduce the potential for loss of life if existing manufactured home parks or subdivisions are flooded. This requirement was included in the regulations prior to October 1, 1986, but was dropped to simplify the regulations since it was assumed that, as a result of ending the "grandfathering" of existing manufactured home parks and subdivisions, the need for the requirement would be reduced as elevation requirements were applied. However, if placement of manufactured homes in existing manufactured home parks is to be permitted without elevation to or above the base flood level, this places additional persons at risk and evacuation plans must again be required.

These plans could be developed by the community as a component of an overall emergency plan or required of individual park owners. The complexity of the plan would be dependent on the severity of the flood hazard and the amount of warning time available. The purpose of this plan is to ensure the safe evacuation of people and not the manufactured homes themselves. The removal of individual manufactured homes from an existing manufactured home park or subdivision after a flood warning is seldom feasible and sometimes dangerous.

The second, and, from the standpoint of reducing future flood losses, most important of the basic provisions in this proposed rule, is the revised requirement at 44 CFR 60.3(c)(6) that manufactured homes be elevated so that their lowest floors are at or above the base flood elevation when placed on sites in an existing manufactured home park or subdivision where a manufactured home has incurred substantial damage as a result of a flood. Paragraph (c)(6) would also require elevation of manufactured homes placed or substantially improved on sites outside of a manufactured home park or subdivision, in a new manufactured home park or subdivision or in an expansion to an existing manufactured home park or subdivision. These sites were subject to the elevation requirement prior to the October 1, 1986 rule revision.

Note that the proposed rule does not apply the elevation requirement to manufactured homes placed in existing manufactured home parks or subdivisions where the repair, reconstruction, or improvement of the streets, utilities, and pads equals or exceeds 50 percent of the value of the streets, utilities and pads prior to the repair, reconstruction or improvement. This provision was contained in the regulations prior to the October 1, 1986 and in the June 30, 1987 **Federal Register**

suspension notice. The provision would no longer be required if the concept of "substantial damage" is to be applied to individual sites.

The term "substantial damage" is defined in a proposed rule which FEMA published in the **Federal Register** on March 7, 1989 (54 FR 9523). "Substantial damage" means damage sustained by a structure (in this case a manufactured home) whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Note that due to a variety of reasons evident in the following paragraph, this provision would apply only to substantial damage due to flood and not to other causes such as a fire or wind. In order to implement this provision, the community would have to determine those sites in existing manufactured home parks where, subsequent to the inclusion of the requirement in their floodplain management regulations, manufactured homes have incurred substantial damage due to a flood. When permits are issued for the placement or substantial improvement of a manufactured home on one of these sites, elevation of the lowest floor of the manufactured home to or above the base flood elevation would be required.

Once a manufactured home has been destroyed or sustained major damage due to a flood on a particular site, there is no justification to further delay imposition of an elevation requirement on that site. As stated in the report to Congress, the post-flood period is an ideal time to upgrade or relocate sites for a variety of reasons, including: (1) These sites will tend to include those subject to the most severe and frequent flooding, (2) the availability of disaster assistance and flood insurance claims payments will ease the financial impacts on owners of manufactured homes, (3) sites affected will tend to be contiguous, allowing use of elevation techniques such as fill or relocation of sites while minimizing impacts on adjoining sites, (4) flooded sites are likely to remain vacant for a period of time unless they are upgraded resulting in loss of rental income to the park owner, (5) costly repairs to park infrastructure will be necessary making it more attractive to relocate these sites out of the floodplain where possible or to abandon them, (6) conversion of the park to alternative uses will often be possible at this time, (7) owners of individual manufactured homes will have lost their homes and will generally want to move to a floodfree site, and (8) there will be a great deal of local support for solving the problem since the severity of the hazard will be clearly evident.

FEMA now believes that there is sufficient validity to the arguments raised by the manufactured home community against its proposal to end the remaining "grandfathering" of existing manufactured home parks and subdivisions on October 1, 1999 to warrant an alternative action. This proposed rule does not include such a provision. However, FEMA continues to believe that requiring elevation of manufactured homes to or above the base flood elevation is the only way to ensure that potential flood losses and threats to public safety are significantly reduced in these existing manufactured home parks and subdivisions. However, as an alternative, the third basic provision in the proposed rule requires that manufactured homes that are placed or substantially improved (for other than substantial damage due to a flood) on sites in existing manufactured home parks or subdivisions are elevated so that the manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than 36 inches in height above the grade at the site. A lower foundation system could be used if the lowest floor of the manufactured home would be at or above the base flood elevation using such a foundation.

The 36 inch pier is the maximum height that a number of States allow without use of an "engineered" foundation at significantly greater cost. The concept of requiring use of at least a 36 inch pier was suggested by the task force chaired by the National Manufactured Housing Federation. FEMA has modified the task force recommendation by requiring use of 36 inch reinforced piers or other foundation elements immediately upon amendment of the local floodplain management regulations subsequent to this rule becoming final.

By requiring, at a minimum, a 36 inch reinforced pier or other foundation system, additional flood protection can be achieved with minimal impacts on the owners of manufactured homes or of existing manufactured home parks. This should result in a reduction of flood losses and the resulting flood insurance claims payments and disaster assistance costs. The 36 inch reinforced pier combined with the height of a manufactured home chassis and floor system would place the top of the manufactured home floor between four and one half and five feet above the lowest grade at the site. This would be sufficient to protect the estimated 75 percent of manufactured homes that are subject to shallow flooding from inundation damage due to the base or 100 year flood, provided that the reinforced pier or other foundation system was designed to withstand the forces of moving floodwaters and the impact of debris carried by those floodwaters. In addition, the 36 inch reinforced pier or other foundation would reduce the frequency of flooding of those manufactured homes on sites subject to greater depths of flooding. If the use of the 36 inch pier or other foundation is not required, it is likely that many manufactured homes would continue to be placed at lower elevations despite the fact that elevation on the 36 inch pier was practicable and could be done at minimal or no additional cost.

All manufactured homes placed in flood hazard areas must be securely anchored to an adequately anchored foundation system to resist floatation, collapse, or lateral movement. If piers are to be used to elevate manufactured homes, they must be reinforced. For flood hazard areas subject to velocity floodwaters or impact by debris, the lateral forces on the foundation and the manufactured home would generally be in excess of those that can be withstood using stacked concrete blocks and over-the-top or frame ties.

The proposed rule also adds a provision at 44 CFR 60.3(e)(8) that clarifies which requirements would apply in Coastal High Hazard Areas (V-zones). This provision states that manufactured homes placed or substantially improved outside of manufactured home parks or subdivisions, in new manufactured home parks or subdivisions, in expansions to existing manufactured home parks or subdivisions, and on sites in existing manufactured home parks and subdivisions on which a manufactured home has incurred substantial damage as a result of a flood, are subject to the construction requirements applicable to all other V-zone structures.

Manufactured homes placed or substantially improved (for reasons other than from substantial damage due to a flood) on other sites in existing manufactured home parks and subdivisions in V-zones would have to meet the proposed requirement at paragraph (c)(12) which provides for use of the 36 inch reinforced pier or other foundation system. It should be noted that use of a reinforced 36 inch pier in a V-zone may be adequate to protect the manufactured home from damage due to sheet flow in small coastal storms. However, these manufactured home

installations will not withstand the wave impacts that would be encountered in V-zones during major coastal storms. The only way to protect a manufactured home located in a V-zone from severe damage due to wave impact during a major coastal storm is to meet the construction requirements applicable to all other V-zone structures.

Note that 44 CFR 60.3 (c)(6) and (c)(12) do not apply to Zone AO (an area of shallow flooding with flood depths of 3 feet or less with no clearly defined channel). Manufactured homes placed or substantially improved in Zone AO must meet the same standards as other residential structures and have their lowest floor elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM). Existing manufactured home parks and subdivisions located in Zone AO were not previously "grandfathered", since elevation at least as high as the depth number could be accomplished by using a standard manufactured home installation.

Requirements To Be Applied to Recreational Vehicles

The October 1, 1986 rule revision defined "manufactured home" to include, for floodplain management purposes, "park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days". For insurance purposes, park trailers, travel trailers, and other similar vehicles were not included. This meant that once one of these vehicles remained on a site for more than 180 consecutive days it became a "manufactured home" and was subject to all the applicable floodplain management requirements including requirements for (1) obtaining a permit in accordance with 44 CFR 60.3(b)(2), (2) elevating and anchoring the vehicle to resist floatation collapse and lateral movement in accordance with 44 CFR 60.3(b)(8), and (3) elevating the vehicle so that its lowest floor is at or above the base flood elevation in accordance with 44 CFR 60.3(c)(6).

The supplementary information in the proposed rule explained the intent of this definition change:

> The intent of this provision is to include these vehicles when they are permanently left on a site and their usage and risk is the same as a "manufactured home", but not include them when they are placed on sites only seasonally or used only for camping and other short term occupancies.

The specific problems that FEMA intended to address by defining certain recreational vehicles to be manufactured homes were two-fold. First, older recreational vehicles are often taken off their wheels and placed on blocks and used as weekend "cottages", hunting or fishing camps, or for similar uses. The second problem has arisen with the recent development of the park trailer and the growth in size of the travel trailer. In some geographical areas, recreational vehicle resorts, travel trailer parks, and campgrounds have been established within which sites are sold or rented for long periods of time. Park trailers and larger travel trailers were located in these recreational vehicle resorts, travel trailer parks and campgrounds. Over time stick-built additions such as "Florida rooms" and other living areas and garages, carports, and sun shades were added to these units and many evolved into seasonal and, in a few instances, year-round housing.

Although FEMA does not currently insure these structures, their use and risk are no different from a manufactured home or conventional house and, as such, they should be subject to the same floodplain management standards as other forms of residential construction. At the time FEMA developed the rule revision that became effective October 1, 1986, it believed that the use of the "180 consecutive day" criteria would cause less disruption in the operation of most travel trailer parks or campgrounds than any alternative course of action. It was anticipated that the recreational vehicle would be periodically moved to avoid meeting the definition of "manufactured home" and becoming subject to "manufactured home" requirements. By ensuring that recreational vehicles placed in flood hazard areas were periodically moved, FEMA would prevent those recreational vehicles from being permanently placed on a site and evolving into seasonal or year-round housing. This would minimize the investment at risk and insure that, if a flood did occur, no individuals would lose their primary residence and become eligible for disaster assistance.

Several of those who commented in response to the June 30, 1987 Federal Register expressed concerns that, by including certain park trailers, travel trailers, and similar vehicles in the definition of "manufactured home", FEMA was improperly equating recreational vehicles with manufactured homes and made the point that the former were not built to industry standards for manufactured homes and were not intended as primary residences. FEMA included these recreational vehicles in the definition of "manufactured home" solely to avoid unnecessary complexity in NFIP criteria and not to imply that they were in any way built to manufactured home standards. It does not believe that the approach is inconsistent with the Manufactured Home Construction and Safety Standards Act of 1974 as indicated in some of those comments.

However, a more serious problem was subsequently brought to FEMA's attention by local officials. FEMA believed that the provision including recreational vehicles in the definition of manufactured home only if they were placed on a site for more than 180 consecutive days would be relatively simple for local officials to administer. However, this has not always been the case, particularly for condominium or long term lease campgrounds, travel trailer parks, and recreational vehicle resorts which are becoming increasingly common. Because the owner of the recreational vehicle either owns the site or has a year or longer lease on that site, the management of the campground, travel trailer park or resort does not keep records of the movements of that individual recreational vehicle. It is difficult for local officials in these communities to ensure that these recreational vehicles are in fact moved and have not remained on the site for more than the 180 consecutive days.

FEMA proposes to address these concerns as part of an overall effort to clarify the requirements applicable to recreational vehicles. FEMA proposes to add a separate definition of "recreational vehicle" which will be consistent with the definition in U.S. Department of Housing and Urban Development regulations and to include separate floodplain management requirements for "recreational vehicles" at 44 CFR 60.3(c)(14).

Under the proposed rule, no floodplain management regulations would apply to a recreational vehicle if the recreational vehicle was on site for less than 180 consecutive days or was fully licenced and ready for highway use. "Ready for highway use" means that the recreational vehicle is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions. If the recreational vehicle did not meet either of these criteria, the recreational vehicle would be subject to the permitting requirement in § 60.3(b)(1) and the elevation and anchoring requirements in § 60.3(c)(6).

There are no provisions for "grandfathering" recreational vehicle sites. These sites can continue to be used by recreational vehicles which are "fully licenced and ready for highway use". Those recreational vehicles which

are currently on sites and which are not "fully licenced and ready for highway use" would not be subject to these requirements unless they were substantially improved or replaced by another recreational vehicle. When a recreational vehicle is removed from the site for whatever reason, the owner of the campground, travel trailer park, recreational vehicle resort or individual site will have the option of either meeting the floodplain management requirements with any replacement recreational vehicle or ensuring that such a vehicle remained fully licensed and highway ready. The latter alternative is not inconsistent with the manner in which most travel trailer parks or recreational vehicle resorts are traditionally operated and should pose no hardship to the owner or operator of that facility.

An additional reason for not "grandfathering" recreational vehicle sites is that nearly all recreational vehicle resorts, travel trailer parks and campgrounds were initially established to serve a transient clientele and only later evolved into permanent placements of individual recreational vehicles on sites. It would not be possible to develop a simple set of criteria for "grandfathering" individual recreational vehicle sites.

FEMA believes that the advantage of this approach is that the local building official should be able to drive by or through a campground, travel park, or recreational vehicle resort periodically and verify that all vehicles in a campground are recreational vehicles.

FEMA intends to provide the community with the option of either using the "180 day" criteria or the "fully licensed and ready for highway use" criteria since either would achieve the intended purpose. Many communities already place limitations on how long a recreational vehicle can be left on a site for reasons other than floodplain management. Other communities are located in areas where, due to climate, possible vandalism, or other reasons, recreational vehicles are seldom left on a site over the winter. These communities have already adopted the "180 day" criteria or its equivalent and can administer the provision without difficulty.

Other Actions

For the purpose of flood insurance rating, all manufactured homes placed or substantially improved in existing manufactured home parks and subdivisions will continue to be treated as Pre-FIRM structures and eligible for Pre-FIRM rates. This will apply even on those sites where a manufactured home has been substantially damaged and where elevation to or above the base flood elevation is required for subsequent placements and substantial improvements of manufactured homes. The reason for continuing to make insurance available at Pre-FIRM rates is the practical difficulty for insurance agents in identifying which sites are subject to an elevation requirement and which are not. However, applicants for flood insurance on these manufactured homes will have the option of submitting an elevation certificate and being rated based on the elevation of the manufactured home if this would result in a lower rate.

FEMA encourages participating communities to work with and assist the owners and residents of existing manufactured home parks and subdivisions in their community to upgrade their parks to minimize flood damages and threats to public safety. In many communities, these existing manufactured home parks constitute a critical housing resource for low and moderate income persons that may be difficult to replace if severely damaged due to flooding. Communities should consider waiving other planning and zoning requirements if this will allow relocation of the most hazardous and frequently flooded sites to flood-free or less hazardous locations or the upgrading of sites to minimize flood damages. There may be situations where public financial assistance in these efforts is in the best interests of all concerned.

FEMA intends to make use of the proposed NFIP Community Rating System to encourage action by communities to reduce damages to and impacts on owners and residents of existing manufactured home parks. Under this Community Rating System, flood insurance premiums would be reduced in those communities which undertake actions to reduce flood losses above and beyond the minimum actions required for participation in the NFIP. The reductions in flood insurance premium would reflect the decreased risk and exposure to losses to the program that would result from these actions. In addition to recognizing more restrictive regulations adopted by a community, the Community Rating System would provide credit for actions such as full disclosure requirements for prospective park tenants, developing emergency flood-fighting plans, and actions to assist manufactured home park owners in upgrading or relocating flood-prone sites or otherwise reducing flood damages.

FEMA has decided not to include in this proposed rule the National Manufactured Housing Federation task force recommendation that there should be a disclosure requirement for manufactured homes placed in existing manufactured home parks in flood hazard areas. The NFIP will continue to depend on the permit requirement for placements of manufactured homes and the notifications required under the mandatory purchase provisions in the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4002, *et seq.*), to disclose flood hazards. Historically, FEMA has encouraged, but not required, the adoption of these disclosure requirements by State or local governments. Disclosure requirements are currently a recommendation for communities in 44 CFR 60.22 Planning Considerations for Floodprone Areas and will be credited under the Community Rating System.

The task force also recommended that the NFIP should explore encouraging the more widespread use of escrowing for flood insurance premiums and establishing payment plans to make flood insurance affordable to the owners of manufactured homes. The task force believed that this would encourage the purchase of flood insurance by these persons. FEMA does recommend that lenders escrow funds for payment of flood insurance premiums. This practice provides a means for lenders to ensure that flood insurance coverage is maintained on properties subject to the mandatory purchase requirement in the Flood Disaster Protection Act of 1973. However, FEMA has no authority to require escrowing. Action would have to be taken by the Federal instrumentalities which regulate the various categories of lenders.

In regard to payment plans, FEMA's concern has been that the risk of flooding is highly seasonal in many types of floodplains and in many areas of the nation. It would be possible that persons would obtain flood insurance and then stop making payments after the season with the severest flood hazard had passed. FEMA will have to study further to determine whether the gain in additional policies in effect that result from the use of payment plans would be sufficient to counterbalance this potential loss of premium income.

Finally, the task force chaired by the National Manufactured Home Federation recommended that the issues related to existing manufactured home parks and subdivisions should be reevaluated at the end of 10 years. The task force felt that the problem should be given the opportunity to solve itself through attrition and that further actions may be unnecessary. FEMA agrees that

this type of review is necessary, particularly since, under the proposed rule, limited "grandfathering" of existing manufactured home parks and subdivisions will continue. If at the end of 10 years, a reevaluation indicates that the regulatory requirements in this proposed rule and the natural attrition of older existing manufactured home parks and subdivisions have substantially reduced the number of sites at risk and the attendant flood losses, no additional actions by FEMA would be necessary. However, if flood losses, government costs, and threats to public safety are not reduced significantly, there may be a need to review other alternatives.

Impacts on Community Ordinances

It is important to emphasize that NFIP criteria are minimum standards that communities must meet in order to participate in the program. The criteria do not preempt State or community authority to adopt more restrictive requirements if they so choose. This is provided for at 44 CFR 60.1(d) which specifically states that more restrictive State and local regulations take precedence over NFIP criteria. Note that no matter what actions FEMA takes regarding existing manufactured home parks and subdivisions, some States and many communities are likely to continue to require standards equivalent to those in the October 1, 1986 rule revision.

Any community which adopted and currently has in force the October 1, 1986 elevation requirement will already be compliant as will communities in those States which require elevation of all manufactured homes. These communities will have the option of incorporating the final rule into their ordinances. In addition, communities which do not have existing manufactured home parks will be considered compliant regardless of the language in their ordinance since the "grandfather" provision would have no practical effect. Ordinance revisions would be required by FEMA for those communities that both (1) have existing manufactured home parks or subdivisions and (2) have retained or amended their ordinances to reincorporate the complete "grandfathering".

FEMA has determined, based upon an Environmental Assessment, that the proposed rule does not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

The proposed rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis. Note that the basis of this determination is FEMA's report "National Flood Insurance Program: Existing Manufactured Home Parks and Subdivisions" which examined these potential impacts in detail.

The proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and hence, no regulatory analysis has been prepared.

FEMA has determined that this proposed rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 59 and 60

Flood insurance, Flood plains.

Accordingly, it is proposed to amend 44 CFR Chapter 1, Subchapter B as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 continues to read as follows:

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

§ 59.1 [Amended]

2. Section 59.1 is amended as follows:

a. By revising the definition of "Existing manufactured home park or subdivision" to read as follows:

* * * * *

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

* * * * *

b. By revising the definition of "Expansion to an existing manufactured home park or subdivision" to read as follows:

* * * * *

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

* * * * *

c. By revising the definition of "Manufactured home" to read as follows:

* * * * *

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

* * * * *

d. By adding, alphabetically, a definition of "New manufactured home park or subdivision" to read as follows:

* * * * *

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

* * * * *

e. By adding, alphabetically, a definition of "Recreational vehicle" to read as follows:

* * * * *

"Recreational vehicle" means a vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

* * * * *

PART 60—CRITERIA FOR LAND USE MANAGEMENT AND USE

3. The authority citation for Part 60 continues to read as follows:

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

§ 60.3 [Amended]

4. Section 60.3 is amended as follows:

a. By adding in paragraph (b)(4) between the phrases "(c)(5)," and "(c)(12)" the phrase "(c)(6)," and between the phrases "(c)(12)," and "(d)(2)" the phrase "(c)(14),".

b. By adding paragraph (b)(9) to read as follows:

* * * * *

(b) * * *

(9) Require that a plan for evacuating residents of all manufactured home parks or subdivisions located within zone A on the community's FHBM or FIRM be developed and filed with and approved by appropriate community emergency management authorities.

* * * * *

c. By revising paragraph (c)(6) to read as follows:

* * * * *

(c) * * *

(6) Require that manufactured homes that are placed or substantially improved within Zones Al–30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation collapse and lateral movement.

* * * * *

d. By revising paragraph (c)(12) to read as follows:

* * * * *

(c) * * *

(12) Require that manufactured homes to be placed or substantially improved on sites in existing manufactured home parks or subdivisions within zones A1–30, AH, and AE on the community's FIRM that are not subject to the provisions of paragraph (c)(6) of this section be elevated so that either (i) the lowest floor of the manufactured home is at or above the base flood elevation, or (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

* * * * *

e. By adding paragraph (c)(14) to read as follows:

* * * * *

(c) * * *

(14) Require that recreational vehicles placed on sites within Zones Al–30, AH, and AE on the community's FIRM either (i) be on the site for less than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the requirements for "manufactured homes" in paragraphs (b)(1) and (c)(6) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

* * * * *

f. By removing in paragraph (d)(1) the phrase "(13)" and replacing it with "(14)".

g. By removing in paragraph (e)(1) the phrase "(13)" and replacing it with "(14)".

h. By adding paragraph (e)(8) to read as follows:

* * * * *

(e) * * *

(8) Require that manufactured homes placed or substantially improved within Zones Vl–30, V, and VE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, meet the standards of paragraphs (e)(2) through (7) of this section.

* * * * *

Dated: May 12, 1989.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 89–11991 Filed 05–18–89; 8:45 am]

BILLING CODE 6718-21-M

federal register

Friday
May 19, 1989

Part V

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for February 1989; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53115; FRL-3556-9]

Premanufacture Notices; Monthly Status Report for February 1989

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for February 1989.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53115]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room L-100, Washington, DC 20460, (202) 554-1305.

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 Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during February; (b) PMNs received previously and still under review at the end of February; (c) PMNs for which the notice review period has ended during February; (d) chemical substances for which EPA has received a notice of commencement to manufacture during February; and (e) PMNs for which the review period has been suspended. Therefore, the February 1989 PMN Status Report is being published.

Date: April 25, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report—February 1989

I. 113 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.

P 89-0328 P 89-0329 P 89-0330 P 89-0331
P 89-0332 P 89-0333 P 89-0334 P 89-0335
P 89-0336 P 89-0337 P 89-0338 P 89-0339
P 89-0340 P 89-0341 P 89-0342 P 89-0343
P 89-0344 P 89-0345 P 89-0346 P 89-0347
P 89-0348 P 89-0349 P 89-0350 P 89-0351
P 89-0352 P 89-0353 P 89-0354 P 89-0355
P 89-0356 P 89-0357 P 89-0358 P 89-0359
P 89-0360 P 89-0361 P 89-0362 P 89-0363
P 89-0364 P 89-0365 P 89-0366 P 89-0367
P 89-0368 P 89-0369 P 89-0370 P 89-0371
P 89-0372 P 89-0373 P 89-0374 P 89-0375
P 89-0376 P 89-0377 P 89-0378 P 89-0379
P 89-0380 P 89-0381 P 89-0382 P 89-0383
P 89-0384 P 89-0385 P 89-0386 P 89-0387
P 89-0388 P 89-0389 P 89-0390 P 89-0391
P 89-0392 P 89-0393 P 89-0394 P 89-0395
P 89-0396 P 89-0397 P 89-0398 P 89-0399
P 89-0400 P 89-0401 P 89-0402 P 89-0403
P 89-0404 P 89-0405 P 89-0406 P 89-0407
P 89-0408 P 89-0409 P 89-0410 P 89-0411
P 89-0412 P 89-0413 P 89-0414 P 89-0415
P 89-0416 P 89-0417 P 89-0418 P 89-0419
P 89-0420 P 89-0421 P 89-0422 P 89-0423
P 89-0424 P 89-0425 P 89-0426 P 89-0427
P 89-0470 Y 89-0058 Y 89-0059 Y 89-0060
Y 89-0061 Y 89-0062 Y 89-0063 Y 89-0064
Y 89-0065 Y 89-0066 Y 89-0067 Y 89-0068
Y 89-0069

II. 274 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.

P 85-0216 P 85-0535 P 85-0536 P 85-0619
P 85-0718 P 86-0294 P 86-0295 P 86-0592
P 86-1078 P 86-1189 P 86-1235 P 86-1602
P 86-1603 P 86-1604 P 86-1607 P 87-0057
P 87-0058 P 87-0059 P 87-0105 P 87-0197
P 87-0198 P 87-0199 P 87-0200 P 87-0201
P 87-0323 P 87-0770 P 87-0794 P 87-0963
P 87-1028 P 87-1066 P 87-1104 P 87-1192
P 87-1226 P 87-1227 P 87-1273 P 87-1337
P 87-1379 P 87-1417 P 87-1436 P 87-1542
P 87-1546 P 87-1547 P 87-1548 P 87-1549
P 87-1555 P 87-1759 P 87-1872 P 87-1881
P 87-1882 P 88-0049 P 88-0083 P 88-0156
P 88-0157 P 88-0195 P 88-0225 P 88-0275
P 88-0319 P 88-0320 P 88-0353 P 88-0387
P 88-0393 P 88-0468 P 88-0515 P 88-0522
P 88-0576 P 88-0598 P 88-0602 P 88-0606
P 88-0622 P 88-0658 P 88-0671 P 88-0701
P 88-0726 P 88-0836 P 88-0864 P 88-0875
P 88-0884 P 88-0888 P 88-0889 P 88-0890
P 88-0894 P 88-0898 P 88-0918 P 88-0972
P 88-0981 P 88-0985 P 88-0997 P 88-0998
P 88-0999 P 88-1005 P 88-1020 P 88-1021
P 88-1035 P 88-1063 P 88-1116 P 88-1118
P 88-1120 P 88-1168 P 88-1189 P 88-1211
P 88-1212 P 88-1220 P 88-1240 P 88-1250
P 88-1271 P 88-1272 P 88-1273 P 88-1274
P 88-1275 P 88-1277 P 88-1303 P 88-1377
P 88-1443 P 88-1446 P 88-1460 P 88-1473
P 88-1514 P 88-1529 P 88-1543 P 88-1567
P 88-1568 P 88-1618 P 88-1619 P 88-1620
P 88-1621 P 88-1622 P 88-1630 P 88-1631
P 88-1632 P 88-1647 P 88-1648 P 88-1657
P 88-1658 P 88-1682 P 88-1686 P 88-1690
P 88-1691 P 88-1730 P 88-1739 P 88-1740
P 88-1748 P 88-1753 P 88-1761 P 88-1763
P 88-1774 P 88-1783 P 88-1786 P 88-1807
P 88-1809 P 88-1811 P 88-1823 P 88-1839
P 88-1844 P 88-1850 P 88-1856 P 88-1857
P 88-1889 P 88-1898 P 88-1937 P 88-1938
P 88-1940 P 88-1956 P 88-1958 P 88-1980
P 88-1982 P 88-1984 P 88-1985 P 88-1995
P 88-1999 P 88-2000 P 88-2001 P 88-2002
P 88-2069 P 88-2100 P 88-2160 P 88-2169
P 88-2177 P 88-2179 P 88-2180 P 88-2181
P 88-2188 P 88-2196 P 88-2204 P 88-2210
P 88-2212 P 88-2213 P 88-2228 P 88-2229
P 88-2230 P 88-2231 P 88-2236 P 88-2237
P 88-2271 P 88-2275 P 88-2293 P 88-2328
P 88-2334 P 88-2341 P 88-2343 P 88-2344
P 88-2349 P 88-2367 P 88-2380 P 88-2389
P 88-2398 P 88-2405 P 88-2434 P 88-2435
P 88-2436 P 88-2437 P 88-2463 P 88-2469
P 88-2470 P 88-2473 P 88-2484 P 88-2518
P 88-2529 P 88-2530 P 88-2536 P 88-2540
P 88-2562 P 88-2563 P 88-2564 P 88-2566
P 88-2568 P 88-2575 P 88-2582 P 88-2587
P 88-2620 P 88-2631 P 88-2632 P 89-0030
P 89-0031 P 89-0066 P 89-0073 P 89-0077
P 89-0078 P 89-0089 P 89-0090 P 89-0091
P 89-0097 P 89-0099 P 89-0115 P 89-0116
P 89-0117 P 89-0122 P 89-0184 P 89-0191
P 89-0194 P 89-0195 P 89-0225 P 89-0227
P 89-0234 P 89-0241 P 89-0245 P 89-0254
P 89-0268 P 89-0278 P 89-0279 P 89-0280
P 89-0287 P 89-0292 P 89-0298 P 89-0301
P 89-0303 P 89-0309 P 89-0310 P 89-0311
P 89-0312 P 89-0313 P 89-0314 P 89-0319
P 89-0321 P 89-0326

III. 74 Premanufacture Notices and Exemption Request for Which the Notice Review Period Has Ended During the Month. Expiration or the Notice Review Period Does Not Signify That the Chemical Has Been Added to the Inventory

PMN No.

P 85-0941 P 87-0068 P 87-1694 P 88-0862
P 88-1221 P 88-1276 P 88-1278 P 88-1403
P 88-1425 P 88-1617 P 88-1623 P 88-1653

P 88-2132 P 88-2133 P 88-2139 P 88-2145
P 88-2296 P 88-2297 P 88-2298 P 88-2330
P 88-2331 P 88-2332 P 88-2359 P 88-2407
P 88-2422 P 88-2487 P 88-2561 P 88-2608
P 88-2633 P 89-0088 P 89-0092 P 89-0093
P 89-0094 P 89-0095 P 89-0096 P 89-0098
P 89-0100 P 89-0101 P 89-0102 P 89-0103
P 89-0105 P 89-0106 P 89-0107 P 89-0108
P 89-0109 P 89-0112 P 89-0113 P 89-0114
P 89-0118 P 89-0119 P 89-0120 P 89-0121
P 89-0123 P 89-0124 P 89-0125 P 89-0126
P 89-0127 P 89-0128 P 89-0130 P 89-0131
P 89-0132 P 89-0133 P 89-0134 P 89-0135
Y 89-0050 Y 89-0053 Y 89-0054 Y 89-0056
Y 89-0057 Y 89-0058 Y 89-0059 Y 89-0060
Y 89-0061 Y 89-0062

IV. 113 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/Generic name	Date of commencement
P 83-0128	G Organozinc salt	Feb. 28, 1983.
P 83-0129	Syncrude (full range, dewaxed dearsinited shale oil)	Dec. 16, 1986.
P 83-0130	Light straight run naphtha	Feb. 1, 1987.
P 83-0131	Heavy straight run naphtha	Do.
P 83-0295	G Organosulfur compound	Dec. 13, 1988.
P 84-0501	Benzene, 1-ethenyl-4-methylbenzene, 1-ethenyl-3-methyl-2-propenoic acid, 2-ethylhexyl ester	Jan. 10, 1989.
P 84-1192	G Functional aromatic polyether	Jan. 20, 1988.
P 85-0215	G Polyester polyol	Mar. 10, 1985.
P 85-0666	G Polyester polyurethane	Feb. 3, 1989.
P 86-0701	G Acrylic resin	June 18, 1986.
P 86-0934	G Ethylene vinyl fatty ester copolymer.	Jan. 16, 1989.
P 86-1084	G Modified phenolic resin	Dec. 28, 1988.
P 86-1161	G Substituted sulfophenyl azo substituted naphthalene sulfonic acid salt	Jan. 6, 1989.
P 86-1163	G Polymethacrylic resin for shade improver for textiles	Feb. 15, 1989.
P 86-1165	G Silane modified aliphatic alicyclic urethane	Do.
P 86-1194	G Alkanoic anhydride	Feb. 13, 1989.
P 86-1614	G Polyalkyleneglycol ester	Jan. 18, 1989.
P 87-0007	G Styrenated acrylic methacrylic polymer	Feb. 10, 1988.
P 87-0294	Linear, C10-C13, alkylbenzenesulfonic acid	Dec. 23, 1988.
P 87-0509	Benzoic acid,2-((3-(4-methoxyphenol)-2-methyl-1-1-propenyl)amino)-, methyl ester	Jan. 9, 1989.
P 87-0552	G Polyurea urethane acrylate	Do.
P 87-0576	G Carbocyanine dye	Do.
P 87-0604	Tall oil fractions unsaturated hydrocarbon resin, substituted alkylbenzene, paraffin dieneophile-modified polymer with pentaerythritol.	Feb. 9, 1989.
P 87-0840	G Isocyanate-terminated polycaprolactone polyol	Jan. 4, 1989.
P 87-1103	G Phosphoric acid choline salt	Jan. 24, 1989.
P 87-1346	G Polyethylene polyamine/bisphenol A-phenol-formaldehyde epichlorohydrin resin/dimer fatty acid condensate mixture with phenylglycidylether.	Jan. 13, 1989.
P 87-1670	G Substituted terpene resin	Feb. 5, 1989.
P 87-1764	G Hindered phenol derivative	Feb. 13, 1989.
P 87-1773	G Polymer of alkyl methacrylates and substituted methacrylamide	Jan. 30, 1989.
P 88-0104	Adipic acid; polyethylene terephthalate; dipropylene glycol; pentaerythritol; tetrabutyl titanate	Jan. 17, 1988.
P 88-0105	Adipic acid; triethylene glycol; tetraethylene glycol tetrabutyl titanate	Do.
P 88-0113	Diethyl cyclosiloxane	Apr. 12, 1988.
P 88-0179	G Polyurethane	Feb. 14, 1989.
P 88-0208	G Substituted aryl aliphatic amine	Feb. 24, 1988.
P 88-0213	G Amine-terminated poly aromatic resin	Jan. 24, 1989.
P 88-0246	G Isocyanated-endcapped substituted polyethylene oxide	Feb. 9, 1989.
P 88-0533	G Sulphated and ethoxylated trisarylphenol	Do.
P 88-0541	Polydimethylalkenyl-siloxane	Jan. 24, 1989.
P 88-0542	G polydimethylalkenyl-siloxane	Do.
P 88-0546	G Trisubstituted-anthraquinone.	Apr. 22, 1988.
P 88-0564	G Boric acid ester of alkanolamine	Jan. 20, 1989.
P 88-0583	Siloxanes and silicones, methyl hydrogen, reaction products with siloxanes and silicones, dimethyl vinyl group-terminated and silane, ethenyltrimethoxy.	Jan. 18, 1989.
P 88-0706	G Water dispersible epoxy	Jan. 28, 1989.
P 88-0709	G Substituted N,N-dimethylcarboxamide heterocycle	Jan. 30, 1989.
P 88-0780	G Polymer from substituted isocyanate and lactam	Dec. 29, 1988.
P 88-0824	Siloxanes and silicones, methyl hydrogen, reaction products with siloxanes and silicones, dimethyl, ethenyl-group terminated and benzene, (1-methyl-ethenyl)-.	Jan. 18, 1989.
P 88-0899	G Urethane/acrylic resin	Feb. 5, 1989.
P 88-0917	G Water dispersible polyester urethane	June 15, 1988.
P 88-0920	G Alkyl methacrylate copolymer	Jan. 15, 1989.
P 88-0940	G Polyurethane ureas	Jan. 20, 1989.
P 88-0995	G Acrylic resin	Feb. 6, 1989.
P 88-1046	Copolyester	Jan. 11, 1989.
P 88-1224	G Tall oil rosin, maleated reaction product with glycerine and synthetic polymer	Jan. 26, 1989.
P 88-1333	G Blocked isocyanurate	Jan. 12, 1989.
P 88-1486	G Styrene-maleic ester copolymer	Jan. 13, 1989.

IV. 113 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic name	Date of commencement
P 88-1490	G Fluoroalkyl siloxane polymer	Jan. 30, 1989.
P 88-1531	G Polyisocyanate based on hexamethylene diisocyanate	Dec. 20, 1989.
P 88-1556	G Substituted phenyl(halosubstituted heterocyclic benzamide)	Jan. 31, 1989.
P 88-1577	G Copoylmer of ethylene and oxygenated vinyl alkane	Jan. 10, 1989.
P 88-1616	G Carboxylated novolak acrylate	Jan. 5, 1989.
P 88-1627	G Composition of lithium diisopropylamide and magnesium bis-diisopropylamide	Oct. 21, 1988.
P 88-1628	G Di(substituted)alkyl hydrogen acid phosphite	Dec. 6, 1988.
P 88-1630	G Acrylic silicon polymer	Jan. 19, 1989.
P 88-1637	G (Heteropolycyclic)heteropolycyclic sulfonamide, potassium salt	Nov. 23, 1988.
P 88-1638	G Di(heteropolycyclic sulfonaido)heteropolycycle	Dec. 16, 1988.
P 88-1639	G (Heteropolycyclic)heteropolycyclic sufonamide.	Nov. 10, 1988.
P 88-1640	G Heteropolycyclic sulfonamide	Dec. 30, 1988.
P 88-1649	G Substituted phthalocyanine	Dec. 14, 1988.
P 88-1656	G Polymer of: aliphatic diisocyanate and a poly (oxyalkylene) polyol	Nov. 15, 1988.
P 88-1674	G Water-soluble phenol-formaldehyde resin.	Oct. 17, 1988.
P 88-1675	G Water-soluble phenol-formaldehyde resin	Do.
P 88-1685	G Perchlorate compound	Nov. 7, 1988.
P 88-1688	Silicon acrylate	Dec. 13, 1988.
P 88-1694	G 2-Bromomethy-1,3-dioxolane.	Nov. 1, 1988.
P 88-1702	G Aryl alkyl polyamide resin	Jan. 24, 1989.
P 88-1707	G polyester resin	Jan. 11, 1989.
P 88-1708	G Polymer of butyl acrylate with mixed alkyl methacrylates and alkyl maleate.	Oct. 24, 1988.
P 88-1714	2,2,2-Trifluoro-4'-chloro-acetophenone.	Nov. 7, 1988.
P 88-1720	G Sulfurized polyolefin	Nov. 22, 1988.
P 88-1752	G Aluminum alkyl	Feb. 1, 1989.
P 88-1757	G Modified chlorinated polyolefin	Dec. 31, 1988.
P 88-1773	G Epoxy modified silicone	Jan. 30, 1989.
P 88-1788	G Ethylene interpolymer	Jan. 16, 1989.
P 88-1868	G Chemically modified beta-cyclodextrin	Jan. 27, 1989.
P 88-1879	G Styrenated methacrylate polymer	Jan. 3, 1989.
P 88-1881	Poly(oxy-1,4-butandily)-alphaoxiranylmethyl)-omega(oxiranylmethoxy); polytetrahydrofuraneglycidylether; polytetramethyleneoxide-diglycidylether.	Feb. 1, 1989.
P 88-1913	G Styrene acrylic copolymer	Jan. 10, 1989.
P 88-1972	G Polyether amide	Feb. 1, 1989.
P 88-1974	Fatty acids, C16-18, esters with pentaerythritol	Dec. 19, 1988.
P 88-2066	G Polyvinyl butyral and organopolysiloxane copolymer	Feb. 6, 1989.
P 88-2129	G Blocked polyurethane	Jan. 6, 1989.
P 88-2257	G Alkoxypolyalkoxysulfocompounds with polyalkanolamine	Jan. 17, 1989.
P 88-2290	G Modified zinc resinate	Do.
P 88-2307	4,7-Diamino-9-hydroxy-11-oxa-1,14-bis(trimethoxysily)tetradecane	Jan. 16, 1989.
P 88-2322	G Acid functional polyester resin of neopentyl glycol	Feb. 6, 1989.
P 88-2323	G Polyurea	Jan. 24, 1989.
P 88-2397	G Starch graft copolymer latex	Jan. 17, 1989.
P 88-2471	G Polyester resin	Dec. 28, 1988.
P 88-2475	G Polyoxyalkylene bicyclohexanol	Do.
P 88-2476	G Polyoxyalkylene bicyclohexanol	Do.
P 88-2485	G Tetra-substituted-naphthol	Jan. 5, 1989.
P 88-2494	G Blocked isocyanate compound	Jan. 17, 1989
P 88-2553	G Polyurethane	Jan. 5, 1989.
P 88-2628	G Substituted carboxylic acid, alkane diol polyester	Feb. 3, 1989.
P 88 2630	G Polysulfide acrylate	Jan. 19, 1989.
P 89-0001	G Peroxy-initiated acrylate ester/ether nitrile polymer	Jan. 20, 1989.
P 89-0012	G Azo-initiated acrylic hydroxy/ester polymer	Do.
Y 88-0226	G Acrylate copolymer	Dec. 23, 1988.
Y 88-0246	G Aromatic polyether esterified with hydroxyacid or polyester	Jan. 9, 1989.
Y 88-0298	G Short oil alkyd	Nov. 2, 1988.
Y 89-0029	G Aqueous polyurethane dispersion	Dec. 24, 1988.
Y 89-0033	2,2-bis(4-(2-hydroxypropoxyl)phenyl)propane polymer with isophthalic acid neopentyl glycol trimethylol propane and toluene diisocyanate.	Do.
Y 89-0035	G polyether polyurethane polymer	Jan. 13, 1989.

V. 19 PREMANUFACTURE NOTICES FOR WHICH THE PERIOD HAS BEEN SUSPENDED

PMN No.

P 88-0436 P 88-0622 P 88-0875 P 88-1682
P 88-1898 P 88-2407 P 88-2597 P 88-2598
P 88-2599 P 89-0089 P 89-0090 P 89-0091
P 89-0097 P 89-0099 P 89-0115 P 89-0117
P 89-0122 P 89-0184 Y 89-0055

[FR Doc. 89-10724 Filed 5-18-89; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
May 19, 1989

Part VI

Environmental Protection Agency

40 CFR Part 81

Assessment of Visibility Impairments and Integral Vista Identification; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AD-FRL-3550-9]

Assessment of Visibility Impairments and Integral Vista Identification

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

ACTION: Final rule.

SUMMARY: In today's action, EPA addresses the necessity of revising the State implementation plans (SIP's) for the States of Arizona, Maine, and Minnesota to include emission limitations representing best available retrofit technology (BART) or other control strategies to remedy source attributable impairments that may exist in certain Class I areas. Today's action is in accordance with a settlement agreement with the Environmental Defense Fund (EDF) and others which requires EPA to promulgate appropriate measures to remedy certified visibility impairments in mandatory Class I Federal areas where the impairment in the area is reasonably attributed to specific sources. Under the agreement, EPA had previously deferred a decision on the need to impose BART requirments for sources within these States (52 FR 45132 (November 24, 1987)). In addition, EPA is amending its listing to correct the identification of a key feature of an integral vista for the Roosevelt Campobello International Park (RCIP). In the November 24, 1987 notice, EPA incorporated into 40 CFR 81 the listing for the integral vistas for RCIP as specified by RCIP in its April 20, 1981 notice (46 FR 22707). The identification of the integral vistas by RCIP inadvertently omitted the key feature proposed to be included by this rulemaking. The EPA is also clarifying the scope of the integral vistas for the RCIP as requested by the RCIP Commission. Today's actions were proposed on September 15, 1988 at 53 FR 35956.

EFFECTIVE DATE: This action will be effective on June 19, 1989.

ADDRESSES: Pursuant to section 307(d)(1)(B) of the Clean Air Act (Act), 42 U.S.C. 7607(d)(1)(B), this rulemaking is subject to the procedural requirements of section 307(d). Therefore, EPA has established a docket for this notice, Docket Number A-88-22. Materials related to the development of this notice have been placed in this docket. For background information, materials related to the development of the visibility protection program (40 CFR 51.300 et seq.) are available in Docket A-79-40. Also, materials related to the development of the visibility new source review and visibility monitoring strategies are available in Docket A-84-32. Finally, materials related to the visibility long-term strategy, implementation of control strategy, and integral vista program are available in Docket A-85-26. All dockets are available for public inspection and copying between 8:00 a.m. and 4:00 p.m. Monday through Friday at EPA's Central Docket Section, Office of General Counsel, Room 1500, Waterside Mall, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Denise Scott, Particulate Matter Programs Section, Air Quality Management Division (MD-15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-0870 or FTS 629-0870.

SUPPLEMENTARY INFORMATION:

Background

A. Regulatory Requirements

Section 169A of the Act, 42 U.S.C. 7491, sets as a national goal "the prevention of any future, and the remedying of any existing impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." Mandatory Class I Federal areas are certain national parks, wildernesses, and international parks as described in section 162(a) of the Act, 42 U.S.C. 7472(a). Section 169A requires that EPA promulgate regulations to assure reasonable progress toward meeting the national goal for mandatory Class I Federal areas where EPA has determined that visibility is an important value. On November 30, 1979, EPA identified 156 areas where visibility is an important air quality related value (44 FR 69122). Section 169A specifically requires EPA to promulgate regulations requiring certain States to amend their SIP's to provide reasonable progress toward meeting the national goal for the 156 areas.

On December 2, 1980, EPA promulgated the required visibility regulations (45 FR 80084, codified at 50 CFR 51.300 et seq.). In broad outline, the visibility regulations require the 36 States listed in § 51.300(b) to: (1) Coordinate SIP development with the appropriate Federal land managers (FLM's), (2) develop a program to assess and remedy visibility impairment from new and existing sources, (3) develop a long-term (10 to 15 years) strategy to assure reasonable progress toward the national goal, (4) develop a visibility monitoring strategy to collect information on visibility conditions, and (5) consider in all aspects of visibility protection any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area) identified by the FLM's as critical to the visitor's enjoyment of the Class I areas.

In December 1982, environmental groups, including EDF, filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility SIP's for the 35 States [1] that had failed to submit SIP's to EPA as called for by the 1980 visibility regulations (*EDF* v. *Thomas*, No. C826850 RPA).

The EPA and the plaintiffs negotiated a settlement agreement for the remaining States which the court approved by order on April 20, 1984. Detailed information on the provisions of the settlement, including a schedule of actions, was announced by EPA at 49 FR 20647 (May 16, 1984).

B. Settlement Agreement

The settlement agreement required EPA to promulgate Federal visibility SIP's, henceforth called Federal implementation plans (FIP's), on a specified schedule for those States that had not submitted visibility SIP revisions to EPA. Specifically, the first part of the agreement required EPA to propose and promulgate FIP's which cover monitoring and new source review (NSR) provisions of 40 CFR 51.305 and 51.307. The EPA proposed such plan revisions for 34 States on October 23, 1984 (49 FR 42670). The EPA promulgated its monitoring strategy for 23 States and its NSR provisions for 21 States (50 FR 28544, 51 FR 5504, and 51 FR 22937). In separate notices, EPA approved the SIP's of the other States with respect to monitoring and NSR.

The second part of the settlement agreement required EPA to determine the adequacy of the SIP's to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions, including implementation control strategies (§ 51.302), integral vista protection (§ 51.302-307), and long-term strategies (§ 51.306). The settlement agreement required EPA to propose and promulgate FIP's to remedy any deficiencies on a specified schedule.

[1] The State of Alaska had submitted a SIP which was approved on July 5, 1983 at 48 FR 30623.

On January 23, 1986, EPA preliminarily determined that the SIP's of 32 States were deficient with respect to the remaining visibility provisions (51 FR 3046). Thereafter, EPA and the plaintiffs negotiated revisions to the settlement agreement which extended the deadlines for proposing FIP's to remedy these deficiencies. The court approved these revisions by its order of September 9, 1986.[2]

In accordance with the revised settlement agreement, EPA promulgated its general plan requirements and long-term strategies for 29 States on November 24, 1987 (52 FR 45132). Under the revised agreement, EPA's decision regarding certified visibility impairments in seven Class I areas in the States of Arizona, Maine, Minnesota, and Utah was deferred until August 31, 1988 pending acquisition and evaluation of additional monitoring information regarding potential sources of impairment. The EPA required additional information to determine whether the impairment in any of these Class I areas is "reasonably attributable" to an existing stationary facility, and to enable a BART analysis for any source so identified as causing or contributing to visibility impairment (40 CFR 51.302(c)(4)(i)).

For the reasons discussed in the September 15, 1988 proposal, EPA and the plaintiffs in *EDF* v. *Thomas* have negotiated further revisions to the settlement agreement which allow EPA until August 31, 1989 to address visibility impairments existing in the Grand Canyon National Park in Arizona, the Canyonlands National Park in Utah, and the Mossehorn Wilderness in Maine.[3]

C. Summary of the Proposal and Comments

On September 15, 1988, EPA proposed the following regulatory actions: not to require the States of Maine, Minnesota, and Arizona to revise their SIP's to include BART limitations; to defer action on impairments in three Class I areas; and to clarify the identification of integral vistas in RCIP. Three comments were received on the proposed regulations. A brief summary of the proposal and comments is found below. A detailed discussion of the impairments in each of the Class I areas is found in the proposal (53 FR 35956) and will not be restated here.

[2] A copy of the Settlement agreement and revisions is available in Docket A–85–26 at the address given at the beginning of this notice.

[3] See *EDF* v. *Thomas*, Joint Motion to Extend Deadline (August 4, 1988).

1. Assessement of Visibility Impairment

a. In the September 15, 1988 proposal, EPA addressed certified visibility impairments in four Class I areas. Based on monitoring activities conducted in these areas, EPA has found that the visibility impairments in these areas are not reasonably attributable to any specific source. Thus, with respect to Voyageurs National Park, RCIP, Saguaro Wilderness, and Petrified Forest National Park, EPA considers it unnecessary at this time to revise the SIP's for Minnesota, Maine, and Arizona to include BART requirements or other control strategies. If impairment is certified in these areas in the future, EPA will address the impairment in the periodic review of the State's long-term strategy (40 CFR 51.306 and 52.29).

b. The EPA delayed its decision on impairments in Canyonlands National Park, Grand Canyon National Park, and Moosehorn Wilderness until further data are available. The EPA deferred action until a National Park Service, et al., study called WHITEX (Winter Haze Intensive Tracer Experiment) is completed (with respect to Grand Canyon and Canyonlands National Parks) and the prevention of significant deterioration (PSD) permit application process for the Georgia-Pacific pulp and paper mill in Woodland Maine (with respect to Moosehorn Wilderness) is finalized. The revised settlement agreement presently calls upon EPA to propose a decision by August 31, 1989 concerning the revision of the FIP's for these three States.

c. On March 31, 1989, in relation to a PSD permitting action, the National Park Service wrote to the EPA Region V Office stating that modeling data indicate that Boise Cascade pulp and paper mill complex located 18 kilometers from the boundary of the Voyageurs National Park may be contributing to impairment in the park. The Park Service letter was not submitted for purposes of this rulemaking, although a copy of the letter has been placed in the docket. Nevertheless, the letter was received well after the close of the comment period, and EPA has not had an opportunity to investigate or evaluate the information submitted, or to determine whether the previously certified impairment in Voyageurs is reasonably attributable to the Boise Cascade complex. Accordingly, EPA will address this matter in the periodic review of the State's long-term strategy (40 CFR 51.306 and 52.29).

2. Correction and Clarified Identification of Vistas in the RCIP.

The EPA proposed on September 15, 1988 to amend 40 CFR Part 81, to remedy the inadvertent omission of a key feature of the RCIP, and to clarify the scope of integral vistas associated with the RCIP.

3. General Comments

Three comments on the notice of proposal were received. Two comments supported EPA's proposing rulemaking. A third comment gave general support to the protection of visibility in the national parks and wildernesses and urged EPA to continue funding the Interagency Monitoring of Protected Visual Environments visibility monitoring network. This comment also recommended that EPA develop initiatives to address visibility impairments from regional haze and to also address interstate impairment issues. Finally, this comment expressed hope that continued negotiation of the PSD permit for the Georgia-Pacific Corporation (Woodland mill) would result in an acceptable and appropriate outcome for all parties.

D. Today's Action

In today's action, the EPA is promulgating the proposed visibility regulations of September 15, 1988 without change. In short, the EPA is:

- Affirming its decision not to require the States of Minnesota, Maine, and Arizona to revise their SIP's to include emission limitations representing BART or other control strategies at this time. Any future certification of impairment will be addressed in the State's periodic review.
- Amending 40 CFR Part 81 to include Grand Manan as a key feature viewed from Con Robinson's Point and to clarify the scope of integral vistas for RCIP.

Classification

The Administrator certifies pursuant to the provisions of 5 U.S.C. 605(b) that the attached rule will not have a significant economic impact on a substantial number of small entities.

The rules promulgated do not contain any information collection requirements subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980, U.S.C. 3501 et seq.

The rules implement part of Subpart P (40 CFR 51.300 through 51.307) which was promulgated on December 2, 1980. An economic impact assessment was made for promulgation of Subpart P and can be found in Docket Number A–79–40.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because: (1) The national annualized costs total less than $100 million; (2) the standards do not cause a major increase in prices or production costs; and (3) the standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets. This regulation was submitted to OMB for review as required by Executive Order 12291. Any written communication between OMB and EPA pertaining to the standards has been put in Docket Number A–88–22.

List of Subjects in Part 81

Air pollution control, Air quality planning areas, Class I areas, Integral vistas.

Date: May 12, 1989.

William K. Reilly,

Administrator.

Part 81, Chapter I of Title 40, Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority for Part 81, Subpart D, continues to read as follows:

Authority: Sections 101(b)(1), 110, 169A(a)(2), and 301(a), Clean Air Act as amended (42 U.S.C. 7401(b), 7410, 7491(a)(2), 7601(a)).

2. Section 81.437 is amended by revising Table 1, footnote 1 to Table 1, and Table 2 to read as follows:

§ 81.437 New Brunswick, Canada.

TABLE 1

Area name	Acreage	Public law establishing	Federal land manager
Roosevelt Campobello International Park	2,721	88–363	(1)

[1] Chairman, RCIP Commission.

TABLE 2.—INTEGRAL VISTAS ASSOCIATED WITH MANDATORY CLASS I AREAS

Park	Observation point	View angle	Key features	Also viewed from—
Roosevelt Campobello International Park.	Roosevelt Cottage and Beach Area.	244°–56°	Estes head* Eastport* North Lubec* Cobscook Bay* Shackford Head* St. Andrews* Friar's Head* Treat's Island* Passamaquoddy Bay* Deer Island* Indian Island* Rouen Island* Cherry Island* Thrumcap Island* Owen House* Welshpool*	*Features viewed from Friar's Head.
	Friar's Head	154°–94°	Roosevelt Cottage* Campobello Island* Weir* Friar's Bay* Welshpool* Wilson's Beach* North Road* Head Harbour Passage* Casco Island* Green Island* Pope Island* Thrumcap Island* Cherry Island* Rouen Island* Indian Island* Deer Island* Passamaquoddy Bay* Old Sow Whirlpool* St. Andrews* Eastport* Friar Roads* Estes Head* Perry* Shackford Head* Pembroke* Cobscook Bay* Treat's Island* Major's Island North Lubec* Passamaquoddy Dam, portion of* Roger's Island Dudley Island* Johnson's Bay* Pope's Folly* Cutler Naval Radio Station Lubec Mulholland Point Lighthouse FDR Memorial Bridge South Lubec Grand Manan Island*	*Features viewed from Roosevelt Cottage and Beach Area.

TABLE 2.—INTEGRAL VISTAS ASSOCIATED WITH MANDATORY CLASS I AREAS—Continued

Park	Observation point	View angle	Key features	Also viewed from—
	Con Robinson's Point	308°–150°	Herring Cove Beach Provincial Park Eastern Head Herring Cove Mainland New Brunswick* Point La Preau* Wolf Islands* Atlantic Ocean* Grand Manan Island	*Features viewed from Liberty Point.*
	Liberty Point	34°–236°	Ragged Point Mainland New Brunswick* Atlantic Ocean* Wolf Islands* Grand Manan Island* Sail Rock West Quoddy Head Lighthouse South Lubec	*Features viewed from Con Robinson's Points.

[FR Doc. 89–12041 Filed 5–18–89; 8:45 am]
BILLING CODE 6560–50–M

federal register

Friday
May 19, 1989

Part VII

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216 et al.

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries; Interim Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216, 229 and 611

[Docket No. 81140-9106]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

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

ACTION: Interim rule.

SUMMARY: NOAA Fisheries issues this interim rule to govern the taking of marine mammals incidental to commercial fishing operations and requests public comments. These regulations implement portions of the recent amendments to the Marine Mammal Protection Act of 1972 (MMPA) which provide a 5-year exemption for certain incidental takings of marine mammals in the course of commercial fishing. The intended effect of this rule is to establish a program for exempting commercial fishermen from certain of the MMPA's prohibitions on taking. After considering public comments, NOAA Fisheries will be issuing final regulations to replace this interim rule.

DATES: The amendments to Parts 216 and 611 and §§ 229.5 and 229.6 of this interim rule become effective on May 19, 1989. The remaining sections in Part 229 become effective on July 21, 1989. Comments on this interim rule must be received by July 18, 1989. Registration for Exemption Certificates under § 229.5 will be accepted immediately. Part 229 expires on October 1, 1993.

ADDRESS: Send comments to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Herbert W. Kaufman, Office of Protected Resources, 301-427-2319; Steven Zimmerman, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, 907-586-7233; Brent Norberg, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115, 206-526-6110; James Lecky, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415, 213-514-6664; Douglas Beach, Northeast Region, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, 508-281-9328; or, Charles Oravetz, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702, 813-893-3366.

SUPPLEMENTARY INFORMATION:

Background

Before the 1988 amendments, the MMPA prohibited the take of marine mammals incidental to commercial fishing operations unless authorized by a general permit or a small take exemption. In order to issue a general permit, NOAA Fisheries was required to determine that the population stock from which a marine mammal was to be taken was within its optimum sustainable population (OSP) and that the marine mammal stock would not be disadvantaged by the incidental take. If these determinations could not be made, a permit could not be issued for that particular marine mammal stock. Early in 1988 it became apparent that the necessary determinations to renew certain general permits could not be made and many fishermen would be forced to forgo fishing altogether or risk substantial penalties for violating the MMPA. To address this problem, Congress amended the MMPA based on a proposal developed by representatives of the fishing industry and the conservation community.

Section 114, added by Pub. L. 100-711 on November 23, 1988, replaces most earlier provisions of the MMPA for granting incidental take authorizations to commercial fishermen with an interim exemption system valid until October 1, 1993. Section 114 gives most commercial fishermen a 5-year exemption from the incidental taking provisions of the MMPA, provided that certain conditions are met. The primary objective of this interim system is to provide a means to obtain reliable information about interactions between commercial fishing activities and marine mammals while allowing commercial fishing operations to continue despite NOAA Fisheries' current inability to make OSP findings. The information collected in conjunction with the exemption system and information on the sizes and trends of marine mammal populations will be used to develop a long-term program to govern the taking of marine mammals associated with commercial fisheries. The Secretary of Commerce is required to provide Congress a proposed system of authorizing incidental takes by January 1, 1992.

The 1988 amendments retain the immediate goal of the MMPA to reduce the incidental kill or serious injury of marine mammals in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate. As stated in Senate Report 100-592, Congress anticipated that progress toward this goal would be achieved through education programs and the development of improved fishing gear and techniques, and commended the commitment made by representatives of commercial fishing organizations to undertake and fund a special research program on gear technology and fishing practices, and to educate and inform fishermen of their responsibilities under the MMPA.

The 1988 amendments require the Secretary of Commerce to publish a list of fisheries, along with the marine mammals and number of vessels or persons involved in each such fishery, in three categories as follows:

(I) A frequent incidental taking of marine mammals;

(II) An occasional incidental taking of marine mammals; or

(III) A remote likelihood, or no known incidental taking, of marine mammals.

NOAA Fisheries published an advance notice of proposed rulemaking and proposed List of Fisheries in the Federal Register on January 27, 1989 (54 FR 4154). Comments were requested by February 27, 1989. NOAA Fisheries issued a notice of final List of Fisheries on April 20, 1989 (54 FR 16072). The List of Fisheries, categorized according to frequency of incidental take of marine mammals, will be reviewed at least annually and may be amended, after notice in the Federal Register and opportunity for public comment.

Based on Congressional guidance, NOAA Fisheries' interpretation of the 1988 amendments, public comment and meetings and consultations with State and Federal agencies, Regional Fishery Management Councils, treaty Indian tribes, and other interested parties, NOAA Fisheries issues this interim rule under the authority of sections 112 and 114(k) of the MMPA to govern exemptions on the taking of marine mammals incidental to commercial fishing operations. The 1988 amendments require that, beginning July 21, 1989, vessel owners must be registered and have proof of an exemption in order to engage lawfully in any Category I or II fishery. The 1988 amendments also require that within 120 days of enactment of the amendments, the Secretary publish in the Federal Register information to advise vessel owners on how to register for an exemption and otherwise comply with the requirements of section 114 of the MMPA. There is not sufficient time to publish a proposed rule to establish a registration and exemption system, solicit public comment, and issue a final

rule in time to notify fishermen of the rule and allow all affected fishing vessel owners an opportunity to register for and receive an exemption before July 21, 1989. Therefore, to accommodate the statutory deadlines, NOAA Fisheries issues this interim rule and requests public comment. The registration and Exemption Certificate provisions established by §§ 229.5 and 229.6 of this interim rule become effective immediately; the prohibitions and other provisions become effective on July 21, 1989. Registration for Exemption Certificates may begin immediately in accordance with the instructions in this document. Based on comments received, NOAA Fisheries will issue final regulations to replace this interim rule that may amend these requirements.

NOAA Fisheries will also issue proposed regulations on the reporting requirements associated with the exemption system, and will request public comment. The reporting requirements will become effective upon publication of final regulations on the reporting requirements in the **Federal Register**.

Comments and Responses

Fifty-six comments were received in response to the January 27, 1989, advance notice of proposed rulemaking and proposed List of Fisheries. Comments and information were received from members of Congress, State and Federal agencies, treaty Indian tribes, fishing associations, fishermen, conservation groups and other interested parties. Comments on the exemption system, observer program and related topics are summarized below along with NOAA Fisheries' responses. These comments were considered in developing this interim rule. Comments on the criteria for categorizing fisheries and on the List of Fisheries are summarized and discussed in the final List of Fisheries (April 20, 1989; 54 FR 16072). Comments on the reporting system will be discussed in the notice issuing NOAA Fisheries' proposed regulations governing the reporting requirements.

Comments on Exemption System

1. One commenter urged that an interim rule be issued to implement the exemption system, to define limitations on intentional taking, and to establish terms and conditions. Another commenter urged that the public be given another opportunity to comment on the proposed exemption system before it is final, and urged that NOAA Fisheries hold public hearings after the first year of implementation.

Beginning July 21, 1989, fishermen must be registered to fish lawfully in any Category I or II fishery. To give fishermen sufficient time to register and to notify them of the requirements that will be in place, NOAA Fisheries issues this interim rule and requests public comment. Based on public comment, a final rule will be issued that may amend these requirements. Public meetings or public hearings will be conducted as necessary during the 5-year interim exemption.

2. Commenters believed that the exemption program should follow a conservative approach that favors the protection of marine mammals. Terms and conditions should be added to all exemptions to protect marine mammals, such as prohibitions on the disposal at sea of fishing gear that may entangle marine mammals.

Section 114 gives fishermen a 5-year exemption from the incidental taking provisions of the MMPA, provided certain conditions are met. The information collected in conjunction with the exemption system and information on the sizes and trends of marine mammal populations will be used to develop a long-term program to govern the incidental taking of marine mammals associated with commercial fisheries. NOAA Fisheries will restrict fisheries during the 5-year exemption if it is determined necessary to prevent significant adverse impacts on marine mammal populations or to comply with other statutory requirements. (See "Emergency and Special Regulations" section below.) NOAA Fisheries also recognizes its duty to reduce the level of incidental kill or serious injuries and has established reasonable terms and conditions to Exemption Certificates to minimize impacts while allowing commercial fisheries to continue. This interim rule prohibits the willful discard of any fishing gear, in whole or in part, in Category I, II and III fisheries.

3. Commenters believed that NOAA Fisheries should reaffirm its intent to meet the immediate goal requirement of the amendments.

NOAA Fisheries recognizes that identifying means of reducing the incidental take is important in developing a long-term program, and expects that the fishing industry will play a major role in developing improved fishing gear and techniques to reduce the incidental take of marine mammals. As noted above, NOAA Fisheries also recognizes its duties to consider requirements to reduce serious injuries or kills incidental to commercial fishing operations.

4. One commenter believed that, since the MMPA's definition of take was not changed, the definition of incidental take should not be restricted to accidental takes by entanglement, serious injury or death. Another commenter believed that only injuries or mortalities should be considered a take under section 114 of the MMPA.

The 1988 amendments to the MMPA did not change the definition of take or the prohibitions on taking marine mammals. Take, as defined in section 3 of the MMPA, means to harass, hunt, capture or kill, or attempt to harass, hunt, capture or kill any marine mammal. Incidental take is defined in this interim rule to mean any accidental or intentional taking of a marine mammal in the course of commercial fishing operations.

5. One commenter believed that the exemption under the MMPA should apply to endangered and threatened marine mammals, regardless of whether or not the takings were authorized under the Endangered Species Act of 1973 (ESA). The commenter believed that takings of endangered or threatened species not authorized under the ESA should only be subject to penalties under the ESA, rather than penalties under both the ESA and MMPA.

In general, the MMPA exemptions will apply to the accidental taking of endangered and threatened marine mammals (except southern sea otters). Restrictions on the MMPA exemptions may be made to reduce the incidental taking or to prohibit any taking of certain endangered and threatened species, if necessary to minimize adverse impacts to a population or to comply with other statutory requirements. However, endangered and threatened species continue to be protected under the ESA. The MMPA exemption does not exempt fishermen from the prohibitions under the ESA on taking endangered and threatened species. To be exempt from the taking prohibitions under the ESA, additional taking authorization is needed.

6. One commenter recommended that fishermen be automatically registered in 1989, since many fishermen will be impossible to reach because they will already be fishing by July 21 when the exemption system is to be in place. The first year should be used to familiarize fishermen with the exemption and reporting requirements.

The 1988 amendments require that, beginning July 21, 1989, vessel owners must register with NOAA Fisheries and have proof of an exemption in order to engage lawfully in any Category I or II fishery. Section 114 of the MMPA and

§ 229.9 of this interim rule contain a provision that unknowing violations will not be prosecuted during 1989. Congress added this exception to account for situations where, because a fisherman was involved in a fishery before the appropriate exemption forms and decals were available or because of the remote location of the fishery, the fisherman had no way of knowing of the requirements or did not have the ability to obtain an exemption.

7. One commenter recommended that one exemption cover both Category I and II fisheries since many fishermen will engage in fisheries in both categories and since the only significant difference between the two categories is observer coverage.

The Exemption Certificate will cover all the Category I and II fisheries that were included in the vessel owner's registration.

8. One commenter believed that using the July 21 date for the start of the annual exemption and reporting requirement would be confusing since it falls in the middle of many fishing seasons.

After the start of the program in July, 1989, NOAA Fisheries plans to use a calendar year for the Exemption Certificates, reporting requirements and quota monitoring, which is less likely to fall in the middle of a fishing season. That is, Exemption Certificates will be valid from January 1 through December 31 and reports covering that period will be due at the end of the year.

9. Commenters opposed requiring a decal as a proof of the exemption since there is already an apparent stigma attached to Category I fisheries and displaying a decal serves no useful purpose. Some of these commenters believed that a decal could potentially subject participating vessels to harm from radical animal rights groups.

NOAA Fisheries believes that a decal will serve to assist in education and enforcement efforts, and does not believe it will place any fisherman at risk. The decal will not distinguish between Category I and II fisheries.

10. One commenter opposed charging a fee for an exemption even though the fisherman may never take a marine mammal.

An Exemption Certificate is required to fish legally in a Category I or II fishery regardless of whether or not marine mammals are taken. As provided in section 114(b)(5) of the MMPA, NOAA Fisheries is charging a fee of $30.00 to cover administrative costs of granting and renewing Exemption Certificates. No Exemption Certificate is required and no fee will be charged to fish legally in Category III fisheries, which have only a remote likelihood of incidentally taking marine mammals.

11. One commenter believed that the regulations should clarify that no takings of southern (California) sea otters and no intentional lethal takings of Steller sea lions, cetaceans and depleted species are allowed under this exemption.

The interim rule includes these restrictions as prohibitions under § 229.4 applicable to Category I, II and III fisheries.

12. Commenters believed that intentional takes to protect gear and catch should be authorized under this program, as they were under the general permits. Other commenters recommended that if intentional takes are authorized, all non-lethal methods be required before taking more serious steps. One commenter recommended that NOAA Fisheries specify that any intentional lethal takings in a Category III fishery are illegal since a need to take marine mammals intentionally would be sufficient basis for listing the fishery in Category II.

The interim rule contains provisions (§§ 229.6(c) and 229.7 (d) and (e)) allowing intentional takings to protect gear, catch or person, similar to those under the general permit system. All non-injurious methods must be attempted prior to injuring or killing an animal that is causing immediate and significant damage. The provisions would also apply to Category III fisheries, although NOAA Fisheries anticipates that there will be few, if any, intentional lethal takings since these fisheries have only a remote possibility of incidentally taking marine mammals. NOAA Fisheries does not believe it is appropriate to place more restrictions on Category III fisheries than on Category I or II fisheries.

13. One commenter believed that the exemption should not allow the intentional lethal taking of Alaskan sea otters since the type of interactions that occur between this species and fisheries would not justify taking an animal to protect gear, catch or person. Sea otters have been subject to malicious takings, and such an authorization could be used as an excuse to continue this practice.

Intentional lethal takings of marine mammals are only allowed under the interim exemption, if necessary to protect gear, catch or person, after all reasonable non-injurious methods of deterrence have been exhausted. The U.S. Fish and Wildlife Service (FWS) concurs with the commenter that intentional takings of sea otters are not necessary to protect gear, catch or human life. Therefore, there should be little or no need to intentionally lethally take sea otters. However, the FWS recommended, based on the best available scientific information, that the intentional lethal take of Alaskan sea otters should be specifically prohibited in this interim rule. Therefore, NOAA Fisheries defers to the FWS on this issue and prohibits the intentional lethal taking of Alaskan sea otters.

14. One commenter objected to the observer requirement for Category I fisheries because of increased costs related to liability insurance and to accommodations for the observers, and because of the zero tolerance policy on drug possession making the captain responsible for any drug possession by the observers.

NOAA Fisheries is required under section 114(e) to place observers on board certain vessels engaged in Category I fisheries, with limited exceptions, and intends to reimburse vessel owners for all reasonable costs directly related to housing and maintaining observers. Section 114(e)(7) of the MMPA also contains limits on a vessel owner's liability for observers. Observers will be made aware of the U.S. Coast Guard's zero tolerance policy and their responsibilities to the Federal government and the vessel owner in regard to the policy.

15. Commenters stated that the role of the required observer should be specified and that the observer should not act as an enforcement agent while on board domestic fishing vessels. Another commenter recommended that the regulations state that data obtained from observers or other sources can and will be used as the basis for prosecuting fishermen for violating the MMPA or the conditions of the interim exemption.

The primary purpose of an observer is to collect scientific information. The observers will not have enforcement authority or powers; however, the data collected by an observer will be used in monitoring quotas for Steller sea lions and North Pacific fur seals. The data can also be used in civil or criminal enforcement proceedings.

16. One commenter recommended that the regulations specify the procedures whereby vessels in Category II and III fisheries may be asked to take observers and the possible consequences of failing to take observers if requested.

The observer requirements apply only to vessels in Category I fisheries. NOAA Fisheries may request vessels in Category II or III to take observers. These vessel owners are not required to take observers, and there are no penalties for not taking observers. Therefore, NOAA Fisheries does not

believe it is appropriate to include any specific provisions in the regulations.

17. One commenter recommended that the regulations include provisions to require fishermen to retain and turn in certain critically needed biological specimens since animals killed during commercial fishing operations may provide the only reasonable source of certain specimens.

NOAA Fisheries has included provisions in § 229.6(c)(10) of this interim rule under which the Assistant Administrator may include additional terms and conditions in Exemption Certificates. Such conditions may include requirements for retention of biological specimens, if determined appropriate.

18. One commenter recommended that special conditions, as allowed under the MMPA in cases where a fishery will have a significant impact on a species, should be issued as soon as possible and contain measures to reduce impacts such as limiting the number of marine mammals which may be taken, the location or season where they may be taken, or the manner or gear that can be used.

NOAA Fisheries will follow the procedures for special regulations to implement necessary mitigating measures when available information indicates a significant adverse impact on a population. (See "Emergency and Special Regulations" section below.)

19. One commenter believed that any mitigating measures should be as limited as possible and not be applied across fisheries, since one fishery should not be accountable for interactions in another fishery.

NOAA Fisheries agrees; however allowable takes under established quotas may need to be allocated among fisheries.

20. One commenter believed that Category III fisheries cannot be regulated on a non-emergency basis even if the fishery poses a significant adverse impact to a marine mammal population over a period of time longer than one year.

NOAA Fisheries disagrees and believes that section 114(g) of the MMPA provides authority for placing restrictions on a Category III fishery if the incidental taking in the fishery will likely have a significant adverse impact on a marine mammal population. Fisheries are not classified based on impacts to marine mammal populations; rather, they are classified based on the average frequency with which marine mammals are incidentally taken in a fishery. Therefore, it is possible that the taking incidental to a Category III fishery, combined with other impacts, could have a significant impact on a marine mammal population.

21. One commenter recommended that NOAA Fisheries emphasize that failure to obtain an exemption or to report will expose the fisherman to penalties and prevent him or her from obtaining an exemption in following years.

The regulations make it clear that failure to obtain an exemption, failure to submit required reports, or failure to comply with other conditions of the Certificate will subject a vessel owner to civil penalties and/or suspension, revocation or denial of the Certificate. The specific penalties will be evaluated on a case-by-case basis. NOAA Fisheries does not believe that failure to register for an exemption for one year should be a basis for automatic denial of an Exemption Certificate in all subsequent years.

22. One commenter recommended that the role of the FWS be discussed, and that the appropriate FWS contact persons be identified. Further, if NOAA Fisheries takes action contrary to a FWS recommendation, the reasons should be specified and included in the appropriate Federal Register publication.

NOAA Fisheries is working with the FWS in implementing this exemption system, and will consult with the FWS on actions that affect or relate to marine mammals under the jurisdiction of the Department of the Interior. The FWS recommendations will be discussed in the appropriate Federal Register publications.

23. One commenter objected to the requirement for treaty-Indians to possess and display proof of exemptions without coordinating with the tribes' treaty fishing licenses and permits, as provided for in the amendments.

NOAA Fisheries is requiring that vessel owners display a decal on their vessel and possess an Exemption Certificate to incidentally take marine mammals. NOAA Fisheries intends to use the services and programs of treaty Indian tribes, as well as other Federal agencies, States, and Regional Fishery Management Councils, to the maximum extent practicable, to issue exemptions.

24. One commenter objected to the preparation of implementing regulations without consultation with Indian tribes on a government to government basis and objected to the lack of a written commitment by NOAA Fisheries to provide for tribal governments to undertake the implementation (including administration, information gathering, monitoring, and enforcement) of the exemption system and to provide financial assistance and equipment (firecrackers or other repelling devices) to assist tribal governments in the implementation.

NOAA Fisheries has encouraged participation by Indian tribes in the rulemaking process by providing copies of the List of Fisheries and notices and soliciting comments. NOAA Fisheries encourages participation by all constituent groups and will continue to work with representatives of the tribal governments to cooperatively implement the exemption system. NOAA Fisheries does not interpret the purpose of the recent amendments as a mandate to fund or promote harassment techniques, but rather to gather information on which to base a long-term marine mammal management regime for the future.

Comments on Observer Program

1. Commenters stated that the observer program should be designed to provide statistically reliable estimates of the rate of marine mammals interactions. To "place observers where the likelihood of observing interactions with marine mammals would be maximized" would upwardly bias the interaction estimate and not clearly define the problem.

NOAA Fisheries is designing an observer program which will be guided by the standard outlined in the amendment "* * * to obtain statistically reliable information on the species and number of marine mammals incidentally taken in the fishery." The amendment includes the following requirements: to obtain the best available scientific information; to assign observers fairly and equitably among fisheries and among vessels in a fishery; and to avoid subjecting an individual person or vessel, or group of persons or vessels, to excessive or overly burdensome coverage. Observer reports will be used to verify the reports submitted by fishermen in Category I fisheries. Data will be gathered and utilized so that comparisons of marine mammal interactions can be made among and within fisheries.

2. One commenter believed that a good alternative verification program will be needed since many vessels will not be able to carry observers and information is needed on many Category II fisheries which are not required to take observers.

NOAA Fisheries will design, and as funds permit implement, an alternative verification program to provide statistically reliable information on the species and number of marine mammals incidentally taken in those fisheries in which an observer cannot be safely accommodated. Alternative programs

may include direct observations of fishing activities from vessels, aircraft, or points on shore.

3. One commenter believed that placing observers on the South Unimak purse seine and Alaska Peninsula drift gillnet fisheries would severely impede fishing operations, impose economic burdens on the owners, and increase the possibility of injury to crew or observer, and provided information to document this belief. In addition, the close living quarters on these small vessels would make the use of female observers problematic. The commenter also believed that, if an observer program is necessary in these fisheries, the use of floating observation platforms would be the most appropriate and effective method. Observations of interactions could be made on a larger segment of the fleet with a minimum of intrusion with any specific vessel.

NOAA Fisheries will not place an observer on a vessel if the facilities of a vessel for housing the observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized. This determination will be made on a case-by-case basis. The response to comment #2 above addresses alternative verification programs.

4. One commenter believed that harvesting vessels should not be included in the vessel counts on which the 20 to 35 percent observer coverage is calculated. In addition, the length of time a vessel fishes should be considered in the calculation for observer coverage.

Although harvesting vessels that deliver fish to a processing vessel without taking their catch on board may not be required to carry observers, these harvesting vessels will be used in calculating observer coverage. The harvesting vessels are the boats that interact with marine mammals. Processing vessels may have more than one bag transfer process going on at one time, therefore, 20–35 percent observer coverage of the fishing operation may be obtained only if more than one observer is placed on a processing vessel. NOAA Fisheries reserves the right to make the decision as to the number of observers on a processing vessel on a case-by-case basis to insure that statistically reliable information is obtained. However, if this method does not provide statistically reliable information on incidental takes, observers will be required on the harvesting vessels.

The length of time a vessel fishes will be considered in determining the extent of observer coverage. However, the length of time a vessel fishes will not be a factor in determining observer placement. The data management system will be designed so that comparisons of marine mammal interactions can be made across fisheries taking into account the amount of effort.

5. One commenter believed that observer effort should be placed where it would be most beneficial in assessing real impact on depleted stocks.

NOAA Fisheries has classified fisheries based on Congressional intent and documented interactions. Section 114(b)(1)(A)(i) of the MMPA does not include criteria based on the status of or impacts to marine mammal stocks for the categorization of fisheries. NOAA Fisheries will first assign observers to Category I fisheries vessels. However, if observers cannot be assigned to all the fisheries listed in Category I, NOAA Fisheries will allocate available observers according to the following priority: (1) Those fisheries that incidentally take marine mammals from any stock designated as depleted; (2) those fisheries that incidentally take marine mammals from population stocks that NOAA Fisheries believes are declining; (3) those fisheries other than those described in 1 and 2 in which the greatest incidental take of marine mammals occurs; (4) and any other fishery identified in Category I.

6. One commenter assumed that observations would be limited to between 20 and 35 percent of the fishing operations for all Category I fisheries, both foreign and domestic, and that any alternative program would be equally applied to foreign and domestic fisheries to avoid discrimination.

Foreign fishery operations are permitted under the Magnuson Fishery Conservation and Management Act which requires 100 percent observer coverage. Observer coverage under the Magnuson Act is not superseded by the less restrictive observer requirement of the MMPA. Therefore, foreign fishery activities will remain subject to 100% observer coverage.

7. One commenter recommended that existing monitoring programs should be used rather than establishing a new observer program for a fishery.

NOAA Fisheries will use existing observer/monitoring programs to the extent possible and will also augment these programs to meet the requirements of the MMPA when necessary and practical.

8. One commenter supported using observers to collect data for Regional Fishery Management Councils.

NOAA Fisheries will, if requested by Regional Fishery Management Councils, States or other Federal agencies, require observers to collect additional information, including, but not limited, to the quantities, species, and physical condition of target and non-target fishery resources and seabirds, unless NOAA Fisheries finds in writing, following public notice and opportunity for comment, that such information will not contribute to the protection of marine mammals or the understanding of the marine ecosystem, including fishery resources and seabirds.

Other Comments.

1. One commenter believed that non-lethal takes should not be counted against the quota for Steller sea lions and North Pacific fur seals. Other commenters recommended that the information system continuously track the number of these animals taken to determine when quotas are reached.

NOAA Fisheries intends to count only lethal takes against the quota, and is developing a proposed system to monitor the quota. (See "Quota Management" section below.)

2. Commenters believed that environmental groups should be consulted in developing the proposed system to govern the incidental taking of marine mammals after section 114 of the MMPA expires, and believed that FWS should be given lead responsibility for aspects of this recommendation relevant to their species.

NOAA Fisheries will consult with all interested parties, including the Marine Mammal Commission, Regional Fishery Management Councils, the FWS, fishing interests and environmental groups in developing its proposed system and its recommendations to Congress.

3. One commenter stressed the need for comprehensive data on population abundance, productivity and sources of mortality in order to develop the long-term management program mandated by Congress.

NOAA Fisheries agrees that more information is needed, and is redirecting its research program to seek that information.

4. Commenters stressed the need for a good education program to work with industry concerning the requirements and the importance and benefits of accurate reporting. One commenter believed that the education program should not be aimed solely at fishermen—there are many misconceptions about fishermen and their interactions with marine mammals.

NOAA Fisheries agrees that a good education program is important and anticipates cooperation from the fishing

industry and conservation community in these efforts.

5. One commenter recommended that conservation/recovery plans be developed and implemented promptly.

NOAA Fisheries is developing conservation plans for the North Pacific fur seal and Steller sea lion. Conservation plans for other depleted species will be prepared at a later time unless NOAA Fisheries determines that a plan will not promote the conservation of the species.

Criteria for Categorizing Fisheries

Under the 1988 amendments, NOAA Fisheries must establish three categories of commercial fisheries according to whether there is frequent (Category I), occasional (Category II) or a remote likelihood or no known (Category III) incidental taking of marine mammals. To classify fisheries, it is necessary to interpret and define "frequent," "occasional" and "remote likelihood." Based on NOAA Fisheries' interpretation of Congressional intent, these terms and the subsequent placement of fisheries into categories were not to be based on the status of stocks of marine mammal species or the likelihood of significant impacts on a species. Actions, such as emergency rules, mitigating measures and alternative verification programs. are available under section 114 to address situations where incidental take may be adversely affecting a marine mammal population or where more information is needed.

NOAA Fisheries believes that "frequent," "occasional" and "remote likelihood" were intended by Congress to be evaluated on the average frequency with which marine mammals are taken incidentally in a fishery. This interpretation would place observers in fisheries where the likelihood of observing incidental takes of marine mammals would be greatest. In evaluating incidental takes for purposes of categorizing fisheries, NOAA Fisheries considers the definition of take in section 3 of the MMPA, the language of section 114, and the legislative history of the 1988 amendments, including the Senate Report, House Report and floor statements.

To determine the frequency of take, it is necessary to define both the level or amount of taking and the time period over which incidental takings will be evaluated. This will allow the calculation of a rate of taking so that a comparison among fisheries can be made. The rate is used to distinguish between fisheries with frequent, occasional and rare taking. The values chosen to define these categories should reflect Congressional intent and should be such that each category would contain fisheries.

One of the primary purposes of the interim exemption system is to obtain reliable information on species and number of marine mammals incidentally taken in commercial fishing operations. Categorizing fisheries will assist NOAA Fisheries in selecting the appropriate method for verifying the reports received from fishermen in a particular fishery. Observers will have the highest probability of seeing incidental takes of marine mammals in fisheries with frequent interactions. Therefore, the expense of placing observers in a Category I fishery is justified by the high probability they will collect sufficient information to assess accurately the total takings in a fishery and to verify the accuracy of fishermen's reports. Observers are not as likely to see marine mammal takes in Category II fisheries and other verification techniques may be more efficient.

In the proposed List of Fisheries, NOAA Fisheries set the level of take at more than one animal for frequent, one or less for occasional, and near zero for remote. Using this level of take, NOAA Fisheries believes that a 20-day period is a reasonable time period to use when determining the frequency of taking for purposes of classifying fisheries.

Using these standards, "frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period, but that there is little likelihood that more than one marine mammal will be incidentally taken. And, "remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

These definitions are applied to categorize fisheries according to the following guidelines. If sufficient documented information is available to estimate the frequency of incidental takings of marine mammals, that information is used in categorizing that fishery. If there is not sufficient documented information to estimate the frequency of incidental takings, the agency considers other factors that would indicate the likelihood of incidental takings such as fishing techniques and gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area. If these factors indicate a likelihood of at least occasional incidental takings, the fishery is placed in Category II. If available information or other factors indicate that the likelihood of incidental takings in a fishery would be so rare or exceptional as to be remote or non-existent, that fishery is placed in Category III.

The Committee Reports (Senate Report 100–592 and House of Representatives Report 200–970) recognize that for the first year section 114 is in effect, there may not be adequate data to determine accurately the placement of all fisheries into categories. Accordingly, these reports specified six fisheries to be included in Category I and two fisheries to be included in Category III. Most of these fisheries were identified and jointly suggested to Congress by representatives of the environmental community and the fishing industry. The Senate Report also specified that the South Unimak (False Pass and Unimak Pass) salmon purse seine fishery should be included in Category I, but the House Report did not. However, in a letter concerning the proposed List of Fisheries, the Senior Senator from Alaska stated that the South Unimak salmon purse seine fishery would not have been suggested for inclusion in Category I if additional information now available had been brought to the attention of the Senate. NOAA Fisheries used this Congressional intent as criteria for classifying fisheries in the final List of Fisheries (April 20, 1989; 54 FR 16072). However, for future revisions to the List of Fisheries, NOAA Fisheries will use all available data, including data from fishermen's reports and results of observer and alternative programs, to classify fisheries. After a year, NOAA Fisheries should have sufficient data to determine if these fisheries are categorized properly. If sufficient data are not available, NOAA Fisheries will rely on Congressional intent when classifying fisheries.

The interim rule contains the following criteria in § 229.03 for classifying fisheries when revising the List of Fisheries:

Category I. (1) There is documented information indicating a "frequent" incidental taking of marine mammals in the fishery, or (2) Congress intended that the fishery be placed in Category I and there is not documented information indicating that it should be placed in another Category.

Category II. (1) There is documented information indicating an "occasional" incidental taking in the fishery, or, (2) in

the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is a likelihood of at least an "occasional" incidental taking in the fishery.

Category III. (1) There is information indicating no more than a "remote likelihood" of an incidental taking of a marine mammal in the fishery, (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is no more than a remote likelihood of an incidental take in the fishery, or (3) Congress intended that the fishery be placed in Category III and there is not documented information indicating that it should be placed in another Category.

The criteria for classifying fisheries are set forth in § 229.3 of this interim rule. In addition, the regulations contain the requirement that the List of Fisheries be reviewed annually beginning in 1990, and may be amended at any time if available information warrants. The annual changes to the List of Fisheries will be published on or about October 1 and will be effective January 1 of the next calendar year. Additional changes may be published and made effective during the year if available information warrants. All affected Category I and II vessel owners will be notified of any changes. If a fishery is changed from Category III to Category I or II, NOAA Fisheries will notify the fishing community through newspapers of general circulation, fishery trade associations, trade journals, electronic media, and through State agencies and Regional Fishery Management Councils.

Interim Commercial Fishing Exemption

Certain incidental takings of marine mammals in commercial fishing operations will be legal under the 5-year interim exemption system provided certain conditions are met. Under these regulations, owners of vessels will be required to register with NOAA Fisheries, display a decal on their vessel, possess an Exemption Certificate authorizing the incidental take of marine mammals, and maintain logs and submit periodic reports to engage lawfully under the MMPA in any Category I or II fishery. Vessels engaged in Category I fisheries will be required to take on board a natural resources observer if requested by NOAA Fisheries. Owners of vessels engaged only in Category III fisheries will not be required to register with NOAA Fisheries or to obtain an Exemption Certificate or decal to fish legally or to incidentally take marine mammals; however, they will be required to submit reports of all marine mammals incidentally killed as a result of their fishing operations. In addition, owners and masters of vessels in all categories will be required to comply with any general regulations, any conditions of the Exemption Certificate issued to the vessel owner, and any special or emergency regulations published under the authority of section 114 of the MMPA.

The 5-year interim exemption applies only to U.S. commercial fishing vessels or to those foreign vessels with valid fishing permits issued under section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Exemptions provided by section 114 of the MMPA are not available to vessels fishing in the yellowfin tuna purse seine fishery in the eastern tropical Pacific, or to foreign treaty fisheries, such as the Japanese salmon driftnet fishery. The interim exemption applies to commercial fishing operations which are defined in § 229.2(g) of this interim rule to include licensed commercial passenger fishing vessels. Therefore, certain charter and party boats fall under these requirements.

The MMPA exemption does not include authority to incidentally take southern (California) sea otters (*Enhydra lutris nereis*). This subspecies historically ranged along the West coast of the United States, but currently is found only along the central California coast and San Nicolas Island, California. Section 114 of the MMPA does not supersede or otherwise affect the provisions of Pub. L. 99–625, passed by Congress in 1986 to govern the translocation of southern sea otters to San Nicolas Island for research and recovery purposes. Within special zones established for this experimental population, certain restrictions on incidental taking under the MMPA do not apply. (See 50 CFR 17.84(d) for a description of these special zones and activities that can be lawfully conducted within these zones.)

The MMPA exemption does not allow the intentional lethal taking of any Steller sea lions, any cetaceans (whales and dolphins), any depleted marine mammals (including the Pribilof Island population of North Pacific fur seals), or any endangered or threatened marine mammals.

In general, the MMPA exemptions will apply to the taking of endangered and threatened marine mammals (except southern sea otters). Restrictions on the MMPA exemptions may be made to reduce the incidental taking or to prohibit any taking of certain endangered and threatened species, if necessary to minimize adverse impacts to a population or to comply with other statutory requirements. However, the MMPA exemption does not exempt fishermen from the prohibitions on taking endangered and threatened species under the ESA. To be exempt from the taking prohibitions under the ESA, additional taking authorization under the ESA is needed.

NOAA Fisheries is conducting the appropriate consultations under section 7 of the ESA concerning the effects of its regulations and the proposed issuance of Exemption Certificates. The Biological Opinions resulting from the consultations will assess the impacts of the fisheries on endangered and threatened species and will conclude whether or not the actions are likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species. NOAA Fisheries may place conditions or restrictions on Exemption Certificates to fulfill its obligations under section 7 of the ESA. These conditions and restrictions may include actions to reduce the incidental taking or may prohibit any taking of an endangered or threatened species.

Exemption Certificates—Categories I and II

Registration process. All vessel owners (or authorized representatives) must register to obtain an Exemption Certificate and decal for each vessel that will be engaged in a Category I or II fishery. The initial registration will cover the remainder of 1989 and all of 1990. After that, registrations to renew Certificates are required each calendar year.

Registration forms, outlining the required information, are available from NOAA Fisheries. One registration per vessel is required and will cover all Category I and II fisheries in which the vessel will participate during the calendar year. The first page of the form should be sent to one of the NOAA Fisheries offices listed in § 229.5(c); the second page is a copy of the registration and will serve as an indication of registration until an Exemption Certificate is issued.

For renewals, completed registration forms, containing the information on file

with NOAA Fisheries, will be sent to existing Certificate holders prior to the beginning of the year. Vessel owners will be required to make any necessary corrections and sign and return the form to NOAA Fisheries. The renewal registration forms should be submitted at least 30 days prior to the vessel engaging in a Category I or II fishery.

In addition to owners of commercial fishing vessels, the definition of "vessel owners" (§ 229.3(p)) includes owners of fixed or other fishing gear that is used in a "non-vessel fishery." A "non-vessel fishery" means a commercial fishing operation that uses fixed or other fishing gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch and pen fisheries. Owners of such gear are subject to the same requirements and restrictions as owners of fishing vessels or fish processing vessels operating in a commercial fishery.

A fee of $30.00 per vessel must accompany each registration or request for renewal. "Vessel owners" in "non-vessel fisheries" must include $30.00 to register all gear owned. The fees collected in connection with the exemption system will be available to NOAA Fisheries to cover the administrative costs of granting Exemption Certificates and renewals.

Issuance of Exemption Certificates and decals. An Exemption Certificate that specifies applicable terms and conditions of any authorized incidental taking and a vessel decal will be issued to the vessel owner for each vessel to be engaged in a Category I or II fishery and who submits a completed registration form and the required fee. The initial Certificate will be valid the remainder of 1989 and all of 1990. After that, Certificate renewals will be issued each year after receipt of an updated registration, required fee and required report(s) covering all registered Category I and II fisheries. A decal will be issued with the initial Certificate and will be valid for 1989. An annual sticker for 1990 will be automatically issued upon receipt of a report covering 1989. In non-vessel fisheries, the 1990 sticker must be affixed to the Certificate. Annual stickers will be issued along with the Certificate renewal in subsequent years.

Decals, along with the annual sticker, must be attached to the vessel port side on the cabin or, in the absence of a cabin, port side forward on the hull. A replacement decal will be issued, if requested, to replace a lost or damaged decal. Decals will not be issued or required to be posted in non-vessel fisheries.

A copy of the Exemption Certificate must be on board the vessel while it is operating in a Category I or II fishery, or, in the case of a non-vessel fishery, a copy of the Certificate must be in the possession of the person in charge of the fishing operation. A copy of the Certificate must be made available upon request to any State or Federal government official authorized to enforce the provisions of the MMPA or to any designated agent of NOAA Fisheries.

Reporting requirements. NOAA Fisheries will issue a proposed rule to govern the reporting requirements under the exemption system, and will request public comment.

Observer requirements. If requested by NOAA Fisheries, the owner of a vessel engaged in a Category I fishery must take on board a natural resources observer. A vessel may be excepted from this requirement if NOAA Fisheries finds that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

Vessel owners, masters and crew members are required to cooperate with observers and are required to provide information, such as vessel location, needed to meet the observers' responsibilities. If feasible and if requested by the observer, marine mammals killed during the fishing operation which are readily accessible to crew members must be brought aboard the vessel for biological processing and may be retained by NOAA Fisheries. NOAA Fisheries recognizes that for many smaller vessels, this will not be feasible and, therefore, would not be required.

Observers may not bring a civil action against the vessel or vessel owner under any law of the United States for any illness, disability or death from service as an observer, with two exceptions. First, an observer may bring a civil action against an owner or vessel for the owner's willful misconduct. Second, the observer's limitation on bringing civil actions does not apply if the observer is performing duties in service to the vessel of the sort that would normally be performed by a crew member.

NOAA Fisheries will provide for the payment of reasonable costs of housing and maintaining observers on board vessels and of maintaining biological specimens if requested by the observer or required in the Exemption Certificate.

Other terms and conditions. The Exemption Certificate will be valid for one calendar year, except that Certificates issued in 1989 will cover the remainder of 1989 and all of 1990. Vessel owners must register each year for a Certificate or renewal. After 1989, a current annual sticker is required for the vessel decal to be valid.

The Certificates will authorize fishermen to intentionally take marine mammals (except southern sea otters), without inflicting injury or death to the marine mammals, to protect catch, gear, or person. If the damage is substantial and immediate and after all practicable non-injurious methods have been taken, fishermen may injure or kill certain non-depleted marine mammals. However, in no case may fishermen intentionally kill Steller sea lions, Alaskan sea otters, any cetaceans (whales and dolphins), any depleted marine mammals (including the Pribilof Island population of North Pacific fur seals), or any endangered or threatened marine mammals under the interim exemption.

If firearms or other potentially injurious methods are used to deter Steller sea lions, cetaceans, or depleted, endangered or threatened marine mammals, due care must be exercised to avoid injuring or killing such marine mammals. If the use of firearms or other means results in an injury or mortality, the taking is presumed to be an intentional lethal take. For example, if a fisherman shoots near a Steller sea lion to scare or harass the animal away from his catch or gear and the animal is killed, that taking would be considered an intentional lethal taking and would be illegal.

Other terms and conditions may be made to Exemption Certificates as determined by NOAA Fisheries. For example, animals killed during commercial fishing operations may provide the only source of certain types of important biological specimens. Certificates may be conditioned to require that biological specimens of scientific value be retained for NOAA scientists.

In the case of endangered or threatened species, NOAA Fisheries may include terms and conditions to MMPA Exemption Certificates, at any time, to fulfill its responsibilities under the ESA. These conditions may include actions or restrictions to reduce or prevent the incidental taking of an endangered or threatened species.

Suspension or revocation of Exemption Certificates. NOAA Fisheries may suspend or revoke a Certificate or may deny a Certificate renewal if the Certificate holder (1) fails to report as required, (2) fails to take on board an observer in a Category I fishery, if requested, or (3) fails to

comply with other terms and conditions of the Exemption Certificate or the regulations governing the interim exemption. The suspension, revocation or denial may occur without notice and opportunity for hearing in the case of failure to submit required reports. Other actions are subject to NOAA's civil procedures contained in subpart D of 15 CFR Part 904.

Requirements for Category III Fisheries

Owners of vessels engaged only in Category III fisheries are not required to register with NOAA Fisheries or to obtain an Exemption Certificate to fish legally under the MMPA or to incidentally take marine mammals. However, they will be required to report all lethal incidental takings, make all reasonable efforts to release animals unharmed, and use all practicable non-injurious methods before any lethal intentional take of a marine mammal to protect gear, catch, or lives in accordance with these regulations. The taking of southern (California) sea otters and the intentional lethal taking of Steller sea lions, Alaskan sea otters, cetaceans, and depleted species (including the Pribilof Island population of North Pacific fur seals) is prohibited. In addition, the incidental taking of endangered or threatened marine mammals is not exempted from the prohibitions under the ESA unless otherwise authorized.

Emergency and Special Regulations

The 1988 amendments to the MMPA provide NOAA Fisheries with both emergency and general authority to issue regulations and/or to impose conditions and restrictions on Exemption Certificates to prevent significant adverse impacts on marine mammal populations. Regulations can apply to Category I, II or III fisheries.

If NOAA Fisheries finds that the incidental taking of marine mammals in a fishery is having an immediate and significant adverse impact on a marine mammal population, emergency regulations will be issued to prevent or minimize to the maximum extent practicable any further taking. This emergency authority will be used only when no alternative is available to prevent an immediate and significant adverse impact. NOAA Fisheries must consult with the Regional Fishery Management Councils, State fishery agencies, and treaty Indian tribal governments, where appropriate, before taking any emergency action. Emergency actions will, to the maximum extent practicable, avoid interfering with existing Regional, State or tribal fishery management or conservation programs, will be as brief in duration and non-intrusive as possible, and will take into account the economics of the fisheries that may be affected and the availability of existing technology to minimize impacts. Although economic factors will be considered in determining the most appropriate method to mitigate the impacts, the primary purpose of the MMPA is to protect marine mammals and economic considerations will not be used as a basis for not taking a necessary emergency action. Emergency actions may include, but are not limited to: Quotas on the number of marine mammals that may be taken; restrictions on the time, manner and location in which marine mammals may be taken; restrictions on the time and location where the fishery may operate; and prohibitions on the use of fishing techniques or gear which are found to cause excessive marine mammal injuries or mortalities.

If NOAA Fisheries finds that the incidental taking of marine mammals in a fishery is not having an immediate and significant adverse impact on a marine mammal population, but that it will likely have a significant adverse impact over a period of time longer than one year, NOAA Fisheries will request the Regional Fishery Management Councils, State fisheries agencies, or treaty Indian tribal governments, where appropriate, to initiate or take action to minimize such impact. If the appropriate Councils, States or tribes do not act in a reasonable period of time, special regulations will be issued or special conditions may be imposed on Exemption Certificates to mitigate the adverse impacts. What constitutes a reasonable period of time will depend on the nature of the requested action and the severity of impacts to the marine mammals in the absence of any action. Any such regulations or conditions will be issued only after notice and opportunity for public comment and only after finding that such action is necessary to further the purposes of the MMPA. Special regulations or conditions will, to the maximum extent practicable, avoid interfering with existing Regional, State or tribal fishery management or conservation programs, and will take into account the views of the appropriate Regional Fishery Management Councils, States, Tribes and the public. As with emergency regulations, special regulations or conditions may include operational or gear restrictions on the fishery.

Quota Management

The 1988 amendments establish a quota of 1,350 Steller sea lions and 50 North Pacific fur seals that may be incidentally killed each year in all fisheries combined under the exemption system. If NOAA Fisheries determines that more than this number of animals will be killed, NOAA Fisheries may prescribe emergency regulations to prevent or minimize further takes in accordance with the procedures described above. These emergency actions may include restrictions on the time and locations where the fishery may operate. Since situations may arise in which a large number of Steller sea lions or North Pacific fur seals are killed by a fishery early in the year, thereby potentially preventing other fisheries from operating later in the year, Congress anticipated that NOAA Fisheries would work with the appropriate Fishery Management Councils, States, fishermen and other interested parties to develop a system of allocating lethal takes among fisheries.

NOAA Fisheries has not yet developed a proposed system for monitoring the incidental take in various fisheries to determine when quotas may be reached or for allocating takes, but will be working with Councils, States, major fishing associations and the conservation community to develop a proposed program and is requesting public comments. NOAA Fisheries believes that it is not practicable to develop a program for the period July 21 through December 31, 1989, because most Alaskan and West Coast fisheries that take Steller sea lions and North Pacific fur seals will be half or fully completed by July 21.

Reports received from fishermen at the end of a season or annually will be of little value in mitigating the effects of disproportionately large takings of any species as they are occurring. A more timely monitoring system will be needed to determine if unexpectedly large numbers of animals are being taken in any fishery. In addition to the creation of a timely reporting system, the development of an allocation system and regulations which restrict fishing in areas with high incidental takes of either species may be necessary to implement the quota system. Possible actions that NOAA Fisheries could take to address these concerns include the following:

1. *Reports.* In conjunction with the States, NOAA Fisheries may propose to add Steller sea lions and North Pacific fur seals to the list of species which are reported on fish tickets in order to

obtain timely reports. Any fish tickets indicating takes of these animals would need to be immediately reported to NOAA Fisheries.

2. Allocations. By combining the previous year's observer data, as well as logbook data and data provided by fisheries associations, NOAA Fisheries may be able to determine if problems are occurring or where or when they are likely to occur. If necessary, NOAA Fisheries would propose a scheme for 1990 or subsequent years to allocate future takings fairly among involved fisheries. In addition, if incidental take reports or other information indicated that any quota were exceeded in one year, the excess number of animals killed might be deducted from the next year's quota.

3. Regulations. If, during any fishing season, it appears that quotas may be exceeded, or that takes are unexpectedly high in certain areas, NOAA Fisheries would issue emergency regulations to restrict or terminate fishing in problem areas.

4. Status of stocks. If available information indicates that the authorized levels of incidental takes will likely have a significant adverse impact on the marine mammal population, NOAA Fisheries may issue emergency or special regulations to limit the taking further.

Penalties/Enforcement

Violations of section 114 of the MMPA, these regulations or the Exemption Certificates will subject vessel owners and fishermen to the penalties provided in the MMPA and in NOAA regulations governing administrative procedures for the assessment of penalties (15 CFR Part 904; 52 FR 10324, March 31, 1987). However, prior to January 1, 1990, unknowing violations of these requirements will not subject a fisherman to penalties. Congress added this exception to account for situations where, because a fisherman was involved in a fishery before the appropriate exemption forms and decals were available or because of the remote location of the fishery, the fisherman had no way of knowing of the requirements or did not have the ability to obtain an exemption. Therefore, NOAA Fisheries has defined "unknowing violations" to include situations where the violator can establish that he or she has not received prior notice of the requirement violated, and has not had the opportunity to receive notice.

In addition, as noted above, Certificates may be revoked, suspended or denied for violations of the MMPA, the regulations or the terms and conditions of the Certificates.

NOAA Fisheries' Enforcement Policy for Takings of Marine Mammals Incidental to Commercial Fishing published in the **Federal Register** on December 6, 1988 (53 FR 49214) remains in effect until July 21, 1989, the effective date of the prohibitions sections of this interim rule.

Observer Program

NOAA Fisheries is required to place observers on Category I vessels to monitor between 20 and 35 percent of the fishing operations by vessels in the fishery. The purpose of the observer coverage is to obtain statistically reliable information on the species and number of marine mammals incidentally taken in a fishery, to verify the adequacy of self-reporting by vessel owners, and to identify possible means for reducing such takes. The extent of observer coverage will be determined as a percentage of fishing effort or activity rather than as a percentage of the number of vessels engaged in the fishery. The specific design of the observer program, including how long an observer will be placed on a particular vessel, will vary between fisheries.

When determining the distribution of observers among fisheries and between vessels in a particular fishery, NOAA Fisheries shall be guided by the following standards:

(1) The requirements to obtain the best available scientific information available;

(2) The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage;

(4) And where practicable, the need to minimize costs and avoid duplication.

NOAA Fisheries is not required to place an observer on a Category I vessel if:

(1) Statistically reliable information can be obtained from observers on processing vessels to which Category I harvesting vessels deliver a catch that has not been taken on board the harvesting vessel;

(2) The facilities of the vessel for housing an observer or for carrying out the functions of the observer are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized as determined by NOAA Fisheries; or

(3) An observer is not available.

The first exception contemplates the situation where Category I vessel catcher/harvester boats do not bring the catch on board, but deliver fish directly to a floating processor on which an observer is placed. For example, observers on foreign vessels in over-the-side joint ventures may satisfy the observer requirements, and observers would not be needed on the catcher/harvester boats. However, if this method will not provide statistically reliable information on incidental takes to protect gear or catch, observers will be required on the harvesting vessels.

With respect to the adequacy of vessels to take an observer on board, NOAA Fisheries will make the necessary determinations on a case by case basis. These determinations will be made on a vessel class or fishery basis or on an individual vessel basis. Examples of situations in which observers will not be required are if a vessel is too small to carry (or house) an observer safely, if an observer will displace a crew member, or if fishing gear or the vessel cannot be operated safely because of the presence of an observer.

The exception for unavailability of observers includes situations where NOAA Fisheries may have inadequate funds to cover a full observer program or may not be able to employ or contract for sufficient qualified personnel to fully staff an observer program. To minimize these situations, NOAA Fisheries intends to use observers, to the maximum extent possible, placed under other authorities, such as the Magnuson Fishery Conservation and Management Act, to collect marine mammal interaction information, in addition to their other duties, to fulfill the observer requirements of the MMPA.

If NOAA Fisheries is unable to meet the required observer level, observers will be allocated among Category I fisheries according to the following list of priorities as specified in section 224(e)(3) of the MMPA:

(1) Those fisheries that incidentally take marine mammals from population stocks designated as depleted;

(2) Those fisheries that incidentally take marine mammals from population stocks that are declining;

(3) Those fisheries other than those described in 1 and 2, in which the greatest incidental take of marine mammals occur; and

(4) Any other Category I fishery.

If observers cannot be placed on Category I vessels at the required level, NOAA Fisheries shall establish alternative observation and verification programs to supplement or replace the

statutorily mandated on-board observer program. The alternative program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

Provided sufficient resources are available, an alternative program may also be established in any fishery for which reliable information is not otherwise obtainable. Voluntary observer programs for Category II and III fisheries will be considered provided that they meet the safety and scientific information criteria set forth for Category I fisheries observer programs and that the observer requirements for Category I fisheries have been met.

NOAA Fisheries, in coordination with Federal and State scientists and personnel experienced in fishery observer programs, is designing its observer program to obtain statistically reliable information on the species and number of marine mammals incidentally taken in as many Category I fisheries as possible. The level of observer coverage and whether or not an alternative program will be used will be determined for each Category I fishery. These determinations will be based on the size and nature of each Category I fishery and on the resources available for these programs. NOAA Fisheries will try to make the best use of available resources by using existing research programs, programs operated by States or other authorities, or alternative programs where statistically reliable information can be obtained at less cost. NOAA Fisheries will make available its proposed program and will request further public comment.

Although the primary purpose of the observer program is to collect data on incidental take of marine mammals, observers are not limited to this activity. Regional Fishery Management Councils, States or other Federal agencies may request NOAA Fisheries to collect other scientific or biological information, such as fishery resources and sea bird data, needed in their resource conservation and management programs. NOAA Fisheries will require the observer to collect the requested additional information unless NOAA Fisheries finds in writing, and after opportunity for public comment, that the collection of the requested information will interfere with the collection of the information related to marine mammals.

Information Management

NOAA Fisheries is developing an information management system to compile, process, store and analyze data received from fishermen's reports, observer and alternative programs, and other sources. To protect the confidentiality of data, the information from the system will be made available to the public only in aggregate form which does not directly or indirectly disclose the identity or business of any person. Such information will be available on a continuing basis, no later than six months after receipt. Depending on the nature of information requests, appropriate user fees may be charged for the information.

Confidential or proprietary information will not be disclosed except:

(1) To Federal employees requiring such information, including to Federal contractors that are authorized to collect, process or analyze report or observer data and that are bound by the restrictions on public release of such data;

(2) To State employees under agreement with NOAA Fisheries that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils.

Under (1) and (3) above, information from observers or from fishermen reports indicating a violation of the MMPA, regulations, or terms and conditions of Exemption Certificates may be used in civil or criminal enforcement proceedings.

Classification

This rule is being issued as an interim rule because it is impracticable and contrary to the public interest to follow the notice of proposed rulemaking and public procedure provisions of section 553 of the Administrative Procedure Act (APA; 5 U.S.C. 553). The MMPA amendments provide that vessel owners in Categories I and II cannot lawfully fish after July 21, 1989, unless they are exempted from MMPA prohibitions. To be exempted by July 21, 1989, these vessel owners are required to register with NOAA Fisheries and receive some physical evidence of their exemption. It is not possible to publish a proposed rule to establish a registration and exemption system, solicit public comments on the proposed rule, and issue a final rule in time to allow all affected fishing vessel owners a sufficient opportunity to register for and receive an Exemption Certificate before July 21, 1989, rather than merely to notify fishermen of the requirements of this rule before that date. Because many vessel owners will not be able to register during their sometimes lengthy fishing trips, a "last-minute" opportunity to register shortly before July 21, 1989, is not sufficient. Therefore, NOAA Fisheries finds for good cause that the proposed rulemaking and public procedure provisions of section 553 of the APA do not apply to this rule.

For these same reasons, NOAA Fisheries finds that it is contrary to the public interest and impracticable to publish those portions of the interim rule governing the registration and exemption system 30 days before their effective date as required by section 553(d) of the APA. However, the 30-day requirement is not being waived for the remaining portions of the interim rule relating to prohibitions on fishing which do not become effective until July 21, 1989.

Notwithstanding the publication of this rule as an interim rule, it is based on considerable public input and comment. The legislation mandating the exemption system is based upon a joint proposal from representatives of the fishing industry and the environmental community. In addition, the agency issued an advance notice of proposed Rulemaking on general requirements of the exemption system on January 27, 1989, and invited comment until February 27, 1989. The interim rule was developed in part with the information received from these public comments. NOAA Fisheries also has consulted State agencies, Regional Fishery Management Councils, representatives of the fishing industry and environmental community and other interested parties. Moreover, this interim rule invites additional public comment for a 60-day period thereby allowing for the modification or amendment of this rule with the publication of a subsequent final rule.

The Assistant Administrator has determined that implementation of the regulations of 50 CFR Part 229 will not have a significant impact on the human environment. NOAA Fisheries has prepared an environmental assessment (EA) on this action. The finding of that EA is that there will be no significant impact on the human environment as a result of this rule and that an environmental impact statement is not required. The EA is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Under Secretary for Oceans and Atmosphere, Department of Commerce, has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The rule provides relief from a regulatory burden under the MMPA by exempting commercial fishermen registered under this exemption system from prohibitions against the incidental take of marine mammals in the course of commercial fishing activities. This rule

will not result in (1) an annual major increase in costs or prices for consumers, individual industries or government agencies; (2) an annual effect on the economy of $100 million or more; or (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this interim rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been approved by the Office of Management and Budget under control number 0648–0224. The collection of information requirement which is subject to the Paperwork Reduction Act is found at 50 CFR 229.5(a). Public reporting burden for this collection of information is estimated to average 15 minutes per response per year to register for an exemption. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service, F/PRI, 1335 East West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn. NOAA Desk Officer).

NOAA Fisheries has determined that this rule does not directly affect the coastal zone of any State that has an approved coastal zone management program under the Coastal Zone Management Act (CZMA). These actions are being taken under the MMPA which grants exclusive authority to the Federal government to regulate the takings of marine mammals. This rule imposes additional registration and reporting requirements on a small segment of the fishing industry but the nature of these requirements is such that by themselves they do not have a direct effect on the coastal zone of any State. This determination has been submitted for review by the responsible State agencies under section 307 of the CZMA.

This rule has been determined not to contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects

50 CFR Part 216

Administrative practice and procedure, Fisheries, Imports, Indians, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 229

Fisheries, Fishing vessels, Marine mammals, Reporting and recordkeeping.

50 CFR Part 611

Fish, Fisheries, Reporting and recordkeeping, Foreign relations.

Regulation Promulgation

For the reasons set out in the preamble, 50 CFR is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for 50 CFR Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. A Note is added to 50 CFR Part 216 immediately following the Table of Contents to read as follows:

Note to Part 216: See also 50 CFR Parts 228 and 229 for regulations governing certain incidental takings of marine mammals.

3. The introductory text of § 216.11 is revised to read as follows:

§ 216.11 Prohibited taking.

Except as otherwise provided in Subparts C, D, and I of this Part 216 or in Parts 228 or 229, it is unlawful for:

* * * * *

4. A Note is added immediately following the heading of § 216.24 to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

Note to § 216.24: The provisions of 50 CFR Part 229, rather than § 216.24, will govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States, other than vessels used in the eastern tropical Pacific yellowfin tuna purse seine fishery, and vessels which have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)) for the period from November 23, 1988, through October 1, 1993. Other commercial fisheries remain subject to regulations under § 216.24.

* * * * *

5. A new part 229 is added to 50 CFR as follows:

PART 229—INTERIM EXEMPTION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

Subpart A—General Provisions

Sec.

229.1 Purpose and scope.
229.2 Definitions.
229.3 Criteria for categorizing fisheries.
229.4 Prohibitions.
229.5 Registrations for Category I and II fisheries.
229.6 Issuance of Exemption Certificates.
229.7 Requirements for Category III fisheries.
229.8 Emergency and special regulations.
229.9 Penalties.
229.10 Confidential fisheries data.

Subpart B—Emergency and Special Regulations [Reserved]

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

Note to Part 229: *Effective Date:* In this Part 229, §§ 229.5 and 229.6 become effective on May 19, 1989, and all other sections become effective on July 21, 1989. This part 229 expires on October 1, 1993.

Subpart A—General Provisions

§ 229.1 Purpose and scope.

(a) The regulations in this part implement section 114 of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1384, Pub. L. 100–711, which provides for a five-year exemption from the Act's prohibition on the taking of marine mammals incidental to certain commercial fishing operations.

(b) The provisions of section 114 of the Marine Mammal Protection Act of 1972, rather than sections 101, 103 and 104, will govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States, other than vessels used in the eastern tropical Pacific tuna purse seine fishery, and vessels which have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)) for the period from November 23, 1988, through October 1, 1993. Therefore, the regulations in this part supersede until October 1, 1993, the other provisions for granting incidental take authority to these commercial fishermen, including regulations at 50 CFR 216.24 and guidelines on the taking of small numbers of marine mammals incidental to commercial fishing operations

published December 13, 1983 (48 FR 55493).

§ 229.2 Definitions.

In addition to the definitions contained in the Act and unless the context otherwise requires, in this Part 229:

(a) "Act" means the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

(b) "Assistant Administrator" means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, or authorized representative.

(c) "Category I fishery" means a commercial fishery determined by the Assistant Administrator to have a frequent incidental taking of marine mammals and identified as such in the List of Fisheries.

(d) "Category II fishery" means a commercial fishery determined by the Assistant Administrator to have an occasional incidental taking of marine mammals and identified as such in the List of Fisheries.

(e) "Category III fishery" means a commercial fishery determined by the Assistant Administrator to have a remote likelihood of, or no known incidental taking of, marine mammals and identified as such in the List of Fisheries. Eligible commercial fisheries not specifically identified as Category I or II fisheries are deemed to be Category III fisheries.

(f) "Certificate" or "Exemption Certificate" means a document issued by the Assistant Administrator under the authority of section 114 of the Act that authorizes the incidental taking of marine mammals and that specifies the terms and conditions of the authorized incidental taking, including any document that modifies the Exemption Certificate.

(g) "Commercial fishing operation" means the catching, taking or harvesting of fish from the marine environment (or other areas where marine mammals occur) as part of an ongoing for-profit business enterprise. The term includes licensed commercial passenger fishing vessel (as defined in 50 CFR 216.3) activities.

(h) "Depleted species" means any species or population which has been determined to be depleted under the Act and is listed in 50 CFR 216.15 or 50 CFR Part 18, Subpart E or any endangered or threatened species of marine mammal.

(i) "Endangered or threatened species" means any species, subspecies or population that has been listed under section 4 of the Endangered Species Act of 1973. A list of endangered and threatened species is found in 50 CFR 17.11–17.12.

(j) "Fishing vessel" or "vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for (1) fishing, or (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing. Fishing vessel or vessel refers only to vessels of the United States, other than vessels used in the eastern tropical Pacific yellowfin tuna purse seine fishery, and vessels which have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act.

(k) "Incidental take" means the accidental or intentional taking of a marine mammal in the course of commercial fishing operations.

(l) "List of Fisheries" means the most recent final list of commercial fisheries published in the **Federal Register** by the Assistant Administrator, categorized according to the frequency of incidental taking of marine mammals, in accordance with the criteria in § 229.3.

(m) "Marine mammal" means any mammal which (1) is morphologically adapted to the marine environment, including sea otters and members of the orders *Cetacea* (whales and dolphins), *Sirenia* (dugongs and manatees) and suborder *Pinnipedia* (seals, sea lions and walrus), or (2) primarily inhabits the marine environment (such as the polar bear).

(n) "Non-vessel fishery" means a commercial fishing operation that uses fixed or other gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch and pen fisheries.

(o) "Observer" means a qualified individual designated by the National Marine Fisheries Service to record the incidence of marine mammal interaction and other scientific data during commercial fishing activities.

(p) "Vessel owner" means the owner of (1) a fishing vessel which is engaged in a commercial fishing operation, or (2) fixed or other commercial fishing gear that is used in a non-vessel fishery.

§ 229.3 Criteria for categorizing fisheries.

(a) *Publication.* (1) The Assistant Administrator will publish in the **Federal Register** notice of a proposed revised List of Fisheries on or about July 1, 1990, 1991 and 1992, for the purpose of receiving public comment. On or about October 1, 1990, 1991, and 1992, the Assistant Administrator will publish a final revised List of Fisheries which will become effective January 1 of the next calendar year.

(2) The proposed and final revised List of Fisheries will (i) Categorize each commercial fishery according to the criteria set forth in paragraph (b) of this section, and (ii) List the marine mammals and the estimated number of vessels or persons involved in each commercial fishery.

(3) The Assistant Administrator may publish a revised List of Fisheries at other times, after notice and opportunity for public comment. The revised final List of Fisheries will become effective no sooner than 30 days after publication in the **Federal Register.**

(b) *Categories.* The List of Fisheries will be revised and commercial fisheries will be categorized into Category I, Category II or Category III according to the following criteria. In evaluating incidental takes for purposes of categorizing fisheries, the Assistant Administrator will consider the definition of take in section 3 of the Act, the language of section 114 of the Act and the legislative history of the 1988 amendments.

(1) *Category I.* (i) There is documented information indicating a "frequent" incidental taking of marine mammals in the fishery, or (ii) Congress intended that the fishery should be placed in Category I and there is no documented information indicating that it should be placed in another Category. "Frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

(2) *Category II.* (i) There is documented information indicating an "occasional" incidental taking of marine mammals in the fishery, or (ii) In the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is a likelihood of at least an "occasional" incidental taking in the fishery. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period, but that there is little likelihood that more than one marine mammal will be incidentally taken.

(3) *Category III.* (i) There is information indicating no more than a "remote likelihood" of an incidental taking of a marine mammal in the

fishery, (ii) In the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is no more than a remote likelihood of an incidental take in the fishery, or (iii) Congress intended that the fishery should be placed in Category III and there is not documented information indicating that it should be placed in another Category. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

§ 229.4 Prohibitions.

(a) *Prohibited activities.* (1) It is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in a Category I or II fishery unless the vessel owner or authorized representative has complied with the requirements pertaining to registration, Exemption Certificates, decals and reports as contained in this 50 CFR Part 229.

(2) It is unlawful to assault, harm, oppose, impede, intimidate, impair or in any way interfere with an observer or the observations being carried out.

(b) *Prohibited taking.* (1) Except as otherwise provided in 50 CFR Part 17, Part 216 or this Part 229, it is unlawful to take any marine mammal incidental to commercial fishing operations.

(2) Under this Part 229, it is unlawful to (i) Take any southern (California) sea otter; or (ii) Intentionally lethally take any Steller sea lion, any Alaskan sea otter, any cetacean, any depleted species (including the Pribilof Island population of North Pacific fur seal), or any endangered or threatened marine mammal. If the use of firearms or other means to deter marine mammals results in an injury or mortality of a marine mammal, the taking is presumed to be an intentional lethal taking.

(3) Exemptions under this Part 229 apply only to prohibitions under the Marine Mammal Protection Act and do not apply to prohibitions under the Endangered Species Act of 1973. To be exempt from the taking prohibitions under the Endangered Species Act, specific authority under that Act is required.

(c) *Other prohibitions.* It is unlawful to violate any other provision of these regulations or the terms and conditions of Exemption Certificates.

§ 229.5 Registrations for Category I and II fisheries.

(a) *Registrations.* To engage lawfully in a Category I or II fishery after July 21, 1989, the vessel owner or authorized representative of the vessel owner must register for and receive an Exemption Certificate or annual renewal. Registrations should be submitted at least 30 days prior to the vessel engaging in a Category I or II fishery. The following information is required to register:

(1) Name, address, and phone number of vessel owner;

(2) Name and address of operator, if different from owner;

(3) Vessel name, length and home port; State commercial vessel license number, Coast Guard documentation number, State registration number, and/or Tribal plaque number, where appropriate;

(4) A list of all Category I and II fisheries that the vessel is expected to participate in during the calendar year (or during 1989 and 1990, if the registration is made during 1989), and the estimated number of trips from port for each fishery; and

(5) A certification, signed and dated by the vessel owner or authorized representative, as follows: "I hereby certify under penalty of perjury that I am the owner of the vessel or that I am authorized to register for this exemption on behalf of the owner, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge."

(b) *Fee.* A check or money order made payable to NOAA, National Marine Fisheries Service, in the amount of $30.00 must accompany each registration or renewal. For good cause, the Assistant Administrator may waive the fee requirement.

(c) *Address.* Registrations and requests for registration forms should be sent to the Director, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1335 East West Highway, Silver Spring, MD 20910 (phone 301/427–2319), or one of the following Regional Offices:

(1) Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, 709 West 9th Street, Juneau, AK 99802 (907/586–7233);

(2) Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115–0070 (206/526–6110);

(3) Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731–7415 (213/514–6664);

(4) Director, Northeast Region, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930 (508/281–9328); or

(5) Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3366).

§ 229.6 Issuance of Exemption Certificates.

(a) *Criteria.* After receipt of a completed initial registration and required fee, an Exemption Certificate and decal will be issued to the vessel owner. If the Certificate and decal are issued in 1989, a 1990 annual sticker for the decal will be automatically issued upon receipt of required report(s) for 1989. The Exemption Certificate will be renewed and an annual sticker issued after receipt of an updated registration, required fee and required report(s) covering all registered Category I and II fisheries. An interim report should be submitted with the renewal request if fishing under the current Exemption Certificate will not be completed by December 31.

(b) *Possession of Certificates and decals.* (1) The decal and, after 1989, a current annual sticker must be attached to the vessel port side on the cabin or, in the absence of a cabin, port side forward on the hull, and must be free of obstruction and in good condition. A decal is not required for non-vessel fisheries.

(2) The Exemption Certificate or valid copy must be on board the vessel while it is operating in a Category I or II fishery, or, in the case of non-vessel fisheries, the Certificate or valid copy must be in the possession of the person in charge of the fishing operation. The Certificate or valid copy must be made available upon request to any State or Federal enforcement agent authorized to enforce the Act or to any designated agent of the National Marine Fisheries Service.

(c) *Terms and conditions.* (1) Certificates will expire at the end of the calendar year, except that Certificates issued in 1989 will expire at the end of 1990. After 1989, a current annual sticker is required for a decal to be valid.

(2) Reports. [Reserved]

(3) Observer requirements. (i) If requested by the National Marine Fisheries Service, a Certificate holder engaged in a Category I fishery must take on board an observer to accompany the vessel on any or all fishing trips in a fishing season.

(ii) After being notified by the National Marine Fisheries Service that the vessel is required to carry an

observer, the Certificate holder must comply with the notification by providing the specified information within the specified time on scheduled or anticipated fishing trips to facilitate observer placement.

(iii) The National Marine Fisheries Service may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

(iv) The Certificate holder, master and crew must cooperate with the observer in the performance of the observer's duties including:

(A) Providing adequate accommodations;

(B) Allowing for the embarking and debarking of the observer as specified by the National Marine Fisheries Service. The operator of a vessel must ensure that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the observer involved;

(C) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;

(D) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties;

(E) Providing true vessel locations by latitude and longitude or loran coordinates, upon request by the observer;

(F) Providing marine mammal specimens, as requested;

(G) Notifying the observer in a timely fashion of when commercial fishing operations are to begin and end; and

(H) Complying with other guidelines, regulations or conditions in Certificates that the National Marine Fisheries Service may develop to ensure the effective deployment and use of observers.

(v) Marine mammals killed during fishing operations which are readily accessible to crew members must be brought aboard the vessel for biological processing, if feasible and if requested by the observer. Marine mammals designated as biological specimens by the observer must be retained in cold storage aboard the vessel, if feasible, until retrieved by authorized personnel of the National Marine Fisheries Service.

(vi) Observers may not bring a civil action against the vessel or vessel owner under any law of the United States for any illness, disability, injury or death from service as an observer, except in cases of the vessel owner's willful misconduct or if the observer is engaged by the owner, master or individual in charge of a vessel to perform any duties in service to the vessel.

(vii) The National Marine Fisheries Service will provide for the payment of all reasonable costs directly related to housing and maintaining observers on board vessels and related to maintaining biological specimens as requested by the observer or required in Exemption Certificates.

(4) Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury and may be retained only if authorized by an observer, by a condition of the Exemption Certificate, or by a scientific research permit that is in the possession of the operator.

(5) A Certificate holder or a crew member may intentionally take marine mammals to protect catch, gear or person during the course of the commercial fishing operation by a means and in a manner not expected to cause death or injury to a marine mammal.

(6) If the infliction of the damage to catch, gear or person is substantial and immediate and only after all non-injurious means authorized by paragraph (c)(5) of this section have been taken, a Certificate holder or crew member may intentionally injure or kill a marine mammal to protect gear, catch or person; except that it is prohibited for a Certificate holder or crew member to intentionally lethally take any Steller sea lion, any Alaskan sea otter, any cetacean, any depleted species (including the Pribilof Island population of North Pacific fur seal), or any endangered or threatened marine mammal.

(7) No fishing gear, in whole or in part, may be willfully discarded.

(8) A Certificate holder must notify the Assistant Administrator in writing: (i) If the vessel will engage in any Category I or II fishery not listed on the registration at least 30 days prior to engaging in that fishery, and (ii) of any changes in mailing address or vessel ownership within 30 days of such change.

(9) Certificates and decals are not transferable. In the event of the sale or change in ownership of the vessel, the Certificate is void and the new owner must register for an Exemption Certificate and decal.

(10) The Assistant Administrator may establish other terms and conditions on Exemption Certificates, including terms and conditions for specific fisheries necessary to minimize adverse impacts to a marine mammal population in accordance with the procedures in § 229.8(b) or to comply with the Endangered Species Act of 1973.

(d) *Suspension, revocation or denial of Certificates.* (1) The Assistant Administrator may suspend or revoke an Exemption Certificate or deny a Certificate renewal in accordance with the provisions in 15 CFR Part 904 if the Certificate holder:

(i) Fails to submit reports as required;

(ii) Fails to take on board an observer in a Category I fishery, if requested by the National Marine Fisheries Service; or

(iii) Fails to comply with other terms and conditions, including special conditions, of the Exemption Certificate or with these regulations;

Except that the suspension, revocation or denial specified in paragraph (d)(1)(i) of this section may be without prior notice or opportunity for hearing.

(2) A suspended Certificate may be reinstated at any time at the discretion of the Assistant Administrator.

§ 229.7 Requirements for Category III fisheries.

(a) Vessel owners engaged only in Category III fisheries are not required to register for or receive an Exemption Certificate. Vessel owners and crew members of such vessels may incidentally take marine mammals subject to these provisions.

(b) [Reserved]

(c) Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury and may be retained only if authorized by an observer, by the Assistant Administrator, or by a scientific research permit that is in the possession of the operator.

(d) Vessel owners and crew members may intentionally take marine mammals to protect catch, gear or person during the course of commercial fishing operations, by a means and in a manner not expected to cause death or injury to a marine mammal.

(e) If the infliction of the damage to gear, catch or person is substantial and immediate and only after all non-injurious methods authorized by paragraph (d) of this section have been taken, a vessel owner or crew member may intentionally injure or kill a marine mammal to protect gear, catch or person; except that it is prohibited for a vessel owner or crew member to intentionally lethally take any Steller sea lion, any Alaskan sea otter, any cetacean, any depleted species (including the Pribilof Island population

of North Pacific fur seal), or any endangered or threatened marine mammal.

(f) The willful discard of any fishing gear, in whole or in part, is prohibited.

§ 229.8 Emergency and special regulations.

(a) *Emergency regulations.* If the Assistant Administrator finds that the incidental taking of marine mammals in a fishery is having an immediate and significant adverse impact on a marine mammal population, or in the case of Steller sea lions and North Pacific fur seals, that more than 1,350 and 50, respectively, will be incidentally killed during a calendar year in all fisheries combined, the Assistant Administrator will issue emergency regulations to prevent, to the maximum extent practicable, any further taking. Any such regulations

(1) Will be issued only after consultation with Regional Fishery Management Councils, State fishery agencies and treaty Indian tribal governments, where appropriate, and will, to the maximum extent practicable, avoid interfering with existing Regional, State or tribal fishery management plans;

(2) Will take into account the economics of the fishery and the availability of existing technology to minimize incidental taking to the extent that elimination of the adverse effects on the marine mammal population will allow;

(3) May take effect immediately upon publication in the **Federal Register** and will remain in effect for no more than 180 days or until the end of the fishing season, whichever is earlier; and

(4) Will be terminated by notice in the **Federal Register** at an earlier date if the Assistant Administrator determines that the reasons for the emergency regulations no longer exist.

(b) *Special regulations or conditions.* (1) If the Assistant Administrator finds that the incidental taking of marine mammals in a fishery is not having an immediate and significant adverse impact on a marine mammal population, but that it will likely have a significant adverse impact over a period of time longer than one year, the Assistant Administrator will request Regional Fishery Management Councils, State fisheries agencies or treaty Indian tribal governments, where appropriate, to initiate or take action to minimize such impact.

(2) If the Councils, States or tribes do not take appropriate action in a reasonable period of time, the Assistant Administrator will issue special regulations or impose special conditions on Exemption Certificates to mitigate the adverse impacts.

(3) Any such regulations or conditions will be issued only if, after notice and opportunity for public comment, the Assistant Administrator determines such action is necessary to further the purposes of section 114 of the MMPA.

§ 229.9 Penalties.

(a) Except as otherwise provided, all violations of these regulations are subject to NOAA's civil procedures contained in 15 CFR Part 904.

(b) Notwithstanding any other provision in these or other NOAA regulations, a person or vessel will not be subject to penalties for unknowing violations based on failure to register occurring before January 1, 1990. An unknowing violation is one where the violator can establish that he or she has not received actual prior notice of the registration requirements and has not had the opportunity to receive actual notice. Actual notice is presumed where a person has received a MMPA Exemption Registration form or any other publication published by National Marine Fisheries Service for the purpose of informing the public of the registration requirements contained in these regulations.

§ 229.10 Confidential fisheries data.

(a) Proprietary or confidential information includes information, the unauthorized disclosure of which could be prejudicial or harmful, such as information or data that are identifiable with an individual fisherman. Proprietary or confidential information obtained under this Part 229 must not be disclosed except

(1) To Federal employees whose duties require access to such information;

(2) To State employees under an agreement with the Assistant Administrator that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(b) Information will be made public in aggregate, summary, or other such form that does not disclose the identity or business of any person in accordance with NOAA Directive 88-30. Aggregate or summary form means data or information submitted by three or more persons that have been summed or assembled in such a way that the summation or assembly does not reveal the identity or business of any person.

Subpart B—Emergency and Special Regulations [Reserved]

PART 611—FOREIGN FISHING

6. The authority citation for 50 CFR Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

7. Section 611.1 is amended by revising paragraph (c) to read as follows:

§ 611.1 Purpose and scope.

* * * * *

(c) Other U.S. laws and regulations apply to foreign vessels fishing in the U.S. EEZ such as the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.* and 50 CFR Parts 216 and 229).

8. Section 611.3 is amended by revising paragraph (a)(3) to read as follows:

§ 611.3 Vessel permits.

(a) * * *

(3) Permits issued under this section do not authorize FFV's or persons to harass, capture, or kill marine mammals. No marine mammals may be taken in the course of fishing unless that vessel has on board a currently valid certificate of inclusion issued under a general permit or an Exemption Certificate, as appropriate, under the Marine Mammal Protection Act. Regulations governing the taking of marine mammals incidental to commercial fishing operations are contained in 50 CFR 216.24 and 229.

* * * * *

Date: May 12, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 89-11877 Filed 5-18-89; 8:45 am]

BILLING CODE 3510-22-M

federal register

Friday
May 19, 1989

Part VIII

Department of Energy

Southwestern Power Administration

Notice of Revised Proposed Town Bluff Power Rate and Opportunities for Public Review and Comment

Federal Register

DEPARTMENT OF ENERGY

Southwestern Power Administration

Notice of Revised Proposed Town Bluff Power Rate; Opportunities for Public Review and Comment

AGENCY: Southwestern Power Administration (SWPA) Department of Energy (DOE).

ACTION: Notice of Revised Proposed Town Bluff Power Rate and Opportunities for Public Review and Comment.

SUMMARY: A new hydropower project located in eastern Texas and generally known as Town Bluff is expected to begin producing power commercially in the near future (now estimated to be July 1, 1989). As required, the Administrator, SWPA, prepared an initial Power Repayment Study for the Town Bluff hydropower project which showed the initial level of annual revenues needed to meet cost recovery criteria under Department of Energy guidelines. Those revenues of $285,444 per year reflected the level needed to cover annual expenses for marketing, additions to plant, major replacements and the operation and maintenance of the generating facilities at the Town Bluff project. The amortized expenses incurred for the project's design and construction are not included in the Town Bluff cost recovery rate calculation because these project costs were financed in total by the project's sponsor, Sam Rayburn Municipal Power Agency (SRMPA). Notice of the opportunity for a 30-day public comment period concerning that rate was issued in the **Federal Register** April 6, 1989, (54 FR 13948). Subsequently, a change of the initial on line date and operation and maintenance projections provided by the Corps of Engineers has revised the proposed rate to a level at which the Administrator has determined that in accordance with 10 CFR 903 (Procedures for Public Participation in Power Transmission Rate Adjustments and Extensions) the public comment period should be extended. The Administrator has also developed a proposed Town Bluff Rate Schedule to recover the required revenues. The revised proposed rate, based upon the updated data for Town Bluff, will require an annual revenue of $373,068 to begin when Town Bluff is placed into commercial operation and to extend through September 30, 1993.

DATE: Written comments are due on or before May 23, 1989.

ADDRESS: Ten copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7529.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977, and SWPA's power marketing activities were transferred from the Department of Interior to the Department of Energy, effective October 1, 1977.

SWPA markets power from 23 multiple-purpose reservoir projects (24 when Town Bluff comes on line) with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma, and Texas. SWPA's marketing area includes these States plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through SWPA's transmission system and exchange agreements with other utilities. The Sam Rayburn Dam project, located in eastern Texas, is not interconnected with SWPA's Integrated System hydraulically, electrically or financially. Instead, the power produced by the Sam Rayburn Dam project is marketed by SWPA as an isolated project under a contract through which the customer purchases the entire power output of the project at the dam. The Town Bluff project, located on the Neches River downstream from the Sam Rayburn Dam, consists of two 4,000 kW hydroelectric generating units. It will also, like the Sam Rayburn Dam project, be marketed as an isolated project under a contract through which the customer, SRMA, receives the entire output of the project for a period of 50 years as a result of funding the construction of the hydroelectric facilities at the project. A separate power repayment study is prepared for each project which has a special rate based on its being a hydraulically, electrically, and/or financially isolated operation.

Following Department of Energy Order Number RA 6120.2, the Administrator, SWPA, prepared an initial and a subsequently revised power repayment study for the Town Bluff project. The revised study was developed because estimates of the Town Bluff operation and maintenance costs provided by the U.S. Army Corps of Engineers were changed from $230,000 per year, which was used in the original study, to $308,440 per year and the estimated commercial on line date has been moved from June 1, 1989, to July 1, 1989. The revised study indicates that the legal requirement to repay the annual expenses for marketing, additions to plant, major replacements and operation and maintenance will be met by the revised proposed revenue level. The revised revenue level, and all future revenue levels for 50 years, will not include any of the costs incurred for the design and construction work that was financed with non-Federal funds provided by SRMA. The Revised Initial Power Repayment Study for the isolated Town Bluff project shows that $373,068 annually ($31,089 per month) is needed to satisfy the present financial criteria for repayment of the project costs. Opportunity is presented for customers and other interested parties to receive copies of the study and proposed rate schedule for the Town Bluff project. If you desire a copy of the Revised Repayment Study Data Package for the Town Bluff project, submit your request to: Mr. Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101, (918) 581–7529.

Written comments on the Revised Proposed Town Bluff Rate are due on or before May 23, 1989. Ten copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

Following review of the written comments, the Administrator will submit the revised rate proposal and the Revised Power Repayment Study for the Town Bluff project, in support of the proposed rates, to the Deputy Secretary of Energy for confirmation and approval on an interim basis and to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate before making a final decision.

Issued in Tulsa, Oklahoma, this 5th day of May, 1989.

J.M. Shafer,

Administrator, Southwestern Power Administration.

[FR Doc. 89–12293 Filed 5–18–89; 8:45 am]

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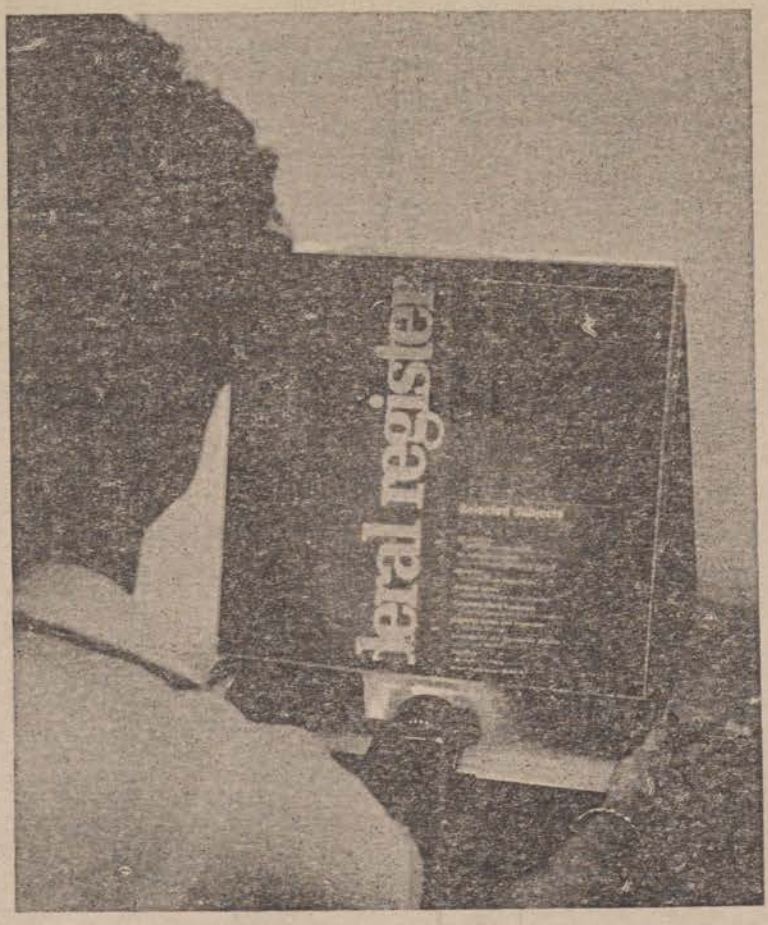

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