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June 19, 1989

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# Journal Register



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Federal Register

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 88-NM-185-AD; Amdt. 39-6234]

#### Airworthiness Directives; Boeing Model 737 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires inspection of the elevator tab inboard hinge support structure to detect fatigue cracking which could result in vibration and possible flutter. The FAA has determined that additional airplanes were manufactured to the same design and are subject to the same failure. This amendment expands the applicability of the existing AD to require inspection of additional airplanes.

**DATE:** Effective July 24, 1989.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. 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 revise AD 76-11-05, Amendment 39-2630 (41 FR 22343; June 3, 1976), to expand the applicability of the existing AD to require inspection of additional affected airplanes, was published in the Federal Register on January 24, 1989 (54 FR 3474).

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 manufacturer requested that the recent revision to Boeing Alert Service Bulletin 737-55A1020, be incorporated in the final rule. The FAA has reviewed and approved Revision 3 of the service bulletin, dated December 22, 1988, and the final rule has been revised to allow inspection in accordance with the later revision to the service bulletin.

The manufacturer also requested that the terminating modification described in Boeing Service Bulletin 737-55-1022 be used as an acceptable means of compliance as described in Boeing Service Bulletin 737-55A1020, Section III, Part II, Revision 3. The FAA concurs that this is an acceptable means of compliance since the Boeing 737 Service Bulletin 737-55-1022, describes installation of an improved spar and the improved "tee" clip defined in Revision 3 of Boeing Alert Service Bulletin 737-55A1020, Section III, Part II, paragraph D. Paragraph D. of the final rule has been revised accordingly. These changes provide operators with additional FAA-approved options for compliance with the rule.

The other commenter requested that the special flight permits be issued in accordance with FAR 21.197 instead of FAR 21.97. The FAA concurs and has corrected this typographical error in paragraph F. of the final rule.

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 noted. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive

inspections. Therefore, the FAA has issued additional rulemaking which proposes to require operators to accomplish one of the modifications identified in paragraph D. of this final rule and, thus, terminate the repetitive inspection requirement. The proposed rule, contained in Docket 89-NM-67-AD (54 FR 22304; May 23, 1989), is a result of the recommendations of the Aging Aircraft Task Force, sponsored by the Air Transport Association (ATA) of America, the Aerospace Industries Association (AIA), and the FAA; it proposes the installation of numerous terminating modifications related to a number of service bulletins applicable to Model 737 airplanes, to be accomplished within 4 years of 75,000 flight cycles, whichever occurs later.

There are approximately 491 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 5 additional airplanes of U.S. registry would be affected by this AD, that it would take approximately 98 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$19,600.

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 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.

**Adoption of the Amendment**

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

**PART 39 [AMENDED]**

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by revising AD 76-11-05, Amendment 39-2630 (41 FR 22343; June 3, 1976), as amended by Amendments 39-2667 and 39-2708, as follows:

**Boeing:** Applies to Boeing Model 737 series airplanes, line number 001 through 491, certificated in any categories. Compliance required as indicated, unless previously accomplished.

To prevent hazardous flutter of the elevator/horizontal stabilizer, accomplish the following:

A. Upon receipt of a pilot report of vibration in the longitudinal control system, prior to further flight, accomplish the inspection required by paragraph C., below. If the relative deflections are less than specified in paragraph C., below, prior to further flight, investigate for the cause of vibration in accordance with existing procedures.

B. In addition to paragraph A., above, within the next 300 hours time-in-service after the effective date of this AD, unless accomplished within the last 700 hours time-in-service, and at intervals thereafter not to exceed 1,000 hours time-in-service, conduct the inspection required by paragraph C., below.

C. Inspect for excessive deflection of the elevator tab, right and left hand, in accordance with the inspection procedures specified in Section III, Part I, paragraphs C. and D., of Boeing Alert Service Bulletin 737-55A1020, Revision 1, dated August 20, 1976; Revision 2, dated February 11, 1977; or Revision 3, dated December 22, 1988. If the elevator tab-to-elevator relative deflection exceeds  $\frac{1}{16}$  inch, prior to further flight, modify the elevator in accordance with paragraph D., below.

D. Installation of one of the modifications specified in Boeing Alert Service Bulletin 737-55A1020, Revision 1, dated August 20, 1976; Revision 2, dated February 11, 1977; or Revision 3, dated December 22, 1988; Section III, Part II, including installation of the bolt retainer clips or the preventive modification specified in Boeing Service Bulletin 737-55-1022, Section III, Part II, dated April 15, 1987, is considered terminating action for the inspection requirements of this AD.

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

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

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes having cracked parts to a base in order to comply with the requirements of this AD. The application for a special flight permit must contain a limitation stating that the airplane must be operated within limits specified in Boeing Operation Manual Bulletin 76-2.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. 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, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 24, 1989.

Issued in Seattle, Washington, on June 7, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 89-14449 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

[Docket No. 88-NM-188-AD; Amdt. 39-6238]

**Airworthiness Directives; Boeing Model 757 Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires modifications to the Takeoff Configuration Warning System (TOCWS) to provide redundant Flap/Slat Electronic Unit (FSEU) inputs. This amendment is prompted by reports of false warnings which have occurred during application of takeoff power and during takeoff roll. This condition, if not corrected, could lead to aborted takeoffs

at high speed due to a takeoff configuration false warning.

**DATES:** Effective July 24, 1989.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:**

John P. Dimtroff, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1938. Mailing address: FAA Northwest Mountain Region, Seattle Aircraft Certification Office, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 757 series airplanes, which requires modifications to provide redundant Flap/Slat Electronic Unit (FSEU) inputs to the Takeoff Configuration Warning System (TOCWS), was published in the *Federal Register* on January 13, 1989 (54 FR 1389).

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 Air Transport Association (ATA) of America, commenting on behalf of three of its members, stated that their airplanes were already in compliance with the proposed rule, and therefore had no objections.

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

There are approximately 58 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The cost of required parts is estimated to be \$50 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$23,800.

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 action 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 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) (Rev. Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

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

**Boeing:** Applies to Model 757 series airplanes specified in Boeing Alert Service Bulletin 757-27A0063, Revision 1, dated May 17, 1985, certificated in any category. Compliance required within the next 12 months after the effective date of the AD, unless previously accomplished.

To prevent the occurrence of takeoff configuration false warnings, accomplish the following:

A. Modify the circuitry of the Takeoff Configuration Warning Systems (TOCWS) in accordance with Boeing Alert Service Bulletin 757-27A0063, Revision 1, dated May 17, 1985.

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

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

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

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

This amendment becomes effective July 24, 1989.

Issued in Seattle, Washington, on June 7, 1989.

Darrell M. Pederson,  
Acting Manager, Transport Airplane  
Directorate, Aircraft Certification Service.  
[FR Doc. 89-14450 Filed 6-16-89; 8:45 am]  
BILLING CODE 4910-13-M

#### 14 CFR Part 97

[Docket No. 25938; Amdt. No. 1402]

#### Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

#### For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

#### For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

#### By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

#### FOR FURTHER INFORMATION CONTACT:

Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The

provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Approaches, Standard instrument, Incorporation by reference.

Robert L. Goodrich,

Director, Flight Standards Service.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the date specified, as follows:

#### PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

**Authority:** 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, Jan. 12, 1983; and 14 CFR 11.49(b)(2)

#### §§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

\* \* \* Effective September 21, 1989

Palatka, FL—Kay Larkin, NDB RWY 9, Amdt. 1

Many, LA—Hart, NDB RWY 12, Amdt. 4

Litchfield, MN—Litchfield Muni, VOR-A,

Orig  
Litchfield, MN—Litchfield Muni, VOR RWY 33, Amdt. 4, CANCELLED

Litchfield, MN—Litchfield Muni, VOR/DME RWY 15, Amdt. 3, CANCELLED

Litchfield, MN—Litchfield Muni, RNAV RWY 13, Orig

Litchfield, MN—Litchfield Muni, RNAV RWY 31, Orig

Rutherfordton, NC—Rutherford County, NDB RWY 36, Amdt. 4

\* \* \* Effective August 24, 1989

Asheville, NC—Asheville Regional, ILS RWY 34, Amdt. 23

Shelbyville, TN—Bomar Fld—Shelbyville Muni, VOR RWY 18, Amdt. 3

Shelbyville, TN—Bomar Fld—Shelbyville Muni, VOR RWY 36, Amdt. 13

Shelbyville, TN—Bomar Fld—Shelbyville Muni, VOR/DME RWY 18, Amdt. 2

Stamford, TX—Arledge Field, NDB RWY 35, Orig

\* \* \* Effective July 27, 1989

Yuma, AZ—Yuma, Mcas Yuma Intl, VOR RWY 17, Amdt. 4

Brawley, CA—Brawley Muni, VOR/DME-A, Orig

Brawley, CA—Brawley Muni, VOR/DME-B, Orig

Hayward, CA—Hayward Air Terminal, LOC/DME RWY, 28L, Amdt. 1

San Francisco, CA—San Francisco Intl, ILS RWY 19L, Amdt. 18

San Jose, CA—San Jose Intl, VOR RWY 12L/R, Amdt. 17, CANCELLED

San Jose, CA—San Jose Intl, VOR RWY 12R, Orig

San Jose, CA—San Jose Intl, LOC/DME RWY 30L, Amdt. 7

San Jose, CA—San Jose Intl, NDB/DME RWY 30L, Amdt. 1

San Jose, CA—San Jose Intl, ILS RWY 12R, Amdt. 3

San Jose, CA—San Jose Intl, ILS RWY 30L, Amdt. 16

Colorado Springs, CO—City of Colorado Springs Muni, NDB RWY 35, Amdt. 24

Colorado Springs, CO—City of Colorado Springs Muni, ILS RWY 17, Amdt. 3

Colorado Springs, CO—City of Colorado Springs Muni, ILS RWY 35, Amdt. 33

\* \* \* Effective June 8, 1989

Klamath Falls, OR—Kingsley Field, VOR/DME or TACAN RWY 14, Amdt. 3

\* \* \* Effective June 7, 1989

Ruston, LA—Ruston Muni, VOR/DME-A, Amdt. 10

\* \* \* Effective June 1, 1989

Fort Wayne, IN—Fort Wayne Muni/Baer Fld, ILS RWY 5, Amdt. 13

Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY, 3R, Amdt. 11

[FR Doc. 89-14451 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Office of the Assistant Secretary for Community Planning and Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 111, 200, 570, 905, and 960

[Docket No. N-89-2004]

### Revised Effective Dates; Corrections

**AGENCY:** Office of the Secretary; Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Office of the Assistant Secretary for Community Planning and Development; and Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of revised effective dates; corrections.

**SUMMARY:** The Department of Housing and Urban Development Act requires HUD to wait 30 calendar days of continuous session of Congress before it makes a published rule effective. The Department computed and announced, at the time of publication, the effective dates for the final and interim rules listed in the "Supplementary Information" section of this document. Because Congress recessed earlier than scheduled for a "conditional adjournment," the Department must revise its previously published effective dates. This document announces the new dates.

**DATES:** See the individual amendments below.

**FOR FURTHER INFORMATION CONTACT:** Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 755-7055. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires HUD to delay the effectiveness of a published rule until 30 days of continuous session of Congress have elapsed. HUD computes the effective date for a particular rule by counting 30 session days of Congress (which excludes recesses for holidays) from the day after the date of publication of the final or interim rule. This method relies on the published schedule of Congress. This year, Congress decided to begin its Memorial Day recess earlier than the published schedule. For this reason, HUD must delay the effective date of several rules until 30 continuous session days of Congress have elapsed.

Accordingly, the Department amends 24 CFR Chapters I, II, III, and IX as follows:

#### **PART III—[AMENDED]**

1. In FR Doc. 89-10981, 24 CFR Part 111, Fair Housing Assistance Program, Final Rule [Docket No. R-89-1404; FR-2403], on page 20094, in the issue of Tuesday, May 9, 1989, the announced effective date of June 19, 1989 is corrected to read as follows:

**EFFECTIVE DATE:** June 20, 1989.

#### **PART 200—[AMENDED]**

2. In FR Doc. 89-10982, 24 CFR Part 200, Scope and Nature of FHA Appraisals and Property Inspections,

Final Rule [Docket No. R-89-1355; FR-2025], on page 19886, in the issue of Tuesday, May 9, 1989, the announced effective date of June 19, 1989 is corrected to read as follows:

**EFFECTIVE DATE:** June 20, 1989.

#### **PART 570—[AMENDED]**

3. In FR Doc. 89-11615, 24 CFR Part 570, Urban Development Action Grant; Implementation of Prohibitions on Use for Business Relocations, Final Rule [Docket No. R-89-1384; FR-2500], on page 21166, in the issue of Tuesday, May 16, 1989, the announced effective date of June 30, 1989 is corrected to read as follows:

**EFFECTIVE DATE:** July 11, 1989.

4. In FR Doc. 89-11736, 24 CFR Part 570, Urban Development Action Grants (UDAG) Program; Changes to Project Selection System, Interim Rule [Docket No. R-89-1440; FR-2647], on page 21388, in the issue of Wednesday, May 17, 1989, the announced effective date of June 30, 1989 is corrected to read as follows:

**DATES:** Effective date: July 12, 1989.

Comment due date: June 16, 1989.

#### **PARTS 905 AND 960—[AMENDED]**

5. In FR Doc. 89-11436, 24 CFR Parts 905 and 960, Preference for Elderly Families and Discretionary Preference for Near Elderly Families in Public Housing Projects for Elderly Families, Final Rule [Docket No. R-89-1417; FR-2505], on page 20758, in the issue of Friday, May 12, 1989, the announced effective date of June 20, 1989 is corrected to read as follows:

**EFFECTIVE DATE:** June 23, 1989.

**Authority:** Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 13, 1989.

**Grady J. Norris,**

*Assistant General Counsel for Regulations.*

[FR Doc. 89-14436 Filed 6-16-89; 8:45 am]

BILLING CODE 4210-01-M

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 799**

[OPTS-42002J; FRL-3603-6]

#### **Fluoroalkenes; Program Review Concerning Mutagenicity and Oncogenicity Testing Under Final Test Rule; Solicitation for Interested Parties**

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

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Toxic Substances Control Act (TSCA), on June 8, 1987 (52 FR 21516), EPA issued a final rule requiring testing for certain health effects for the following fluoroalkenes: Vinyl fluoride (VF; CAS No. 75-02-5), vinylidene fluoride (VDF; CAS No. 75-38-7), hexafluoropropene (HFP; CAS No. 116-15-4) and tetrafluoroethane (TFE; CAS No. 116-14-3). Included in the rule was a commitment by EPA to allow a public review prior to proceeding with Tier III mutagenicity testing (the mouse visible specific locus test (MVSL) or heritable translocation test) or oncogenicity testing. This review is specific to VF and HFP, the two fluoroalkenes for which such testing requirements have been triggered by testing completed under the rule. This notice announces a public meeting to discuss such testing for VF and HFP, and requests all persons desiring to have the status of "interested 89T-357 parties" in participating in discussions to notify EPA of their interest.

**DATES:** Submit written notice of interest to be designated an "interested party" for the purposes of participating in the public meeting on or before July 12, 1989. The public meeting will be held on July 19, 1989, at 1 p.m. in Rm. NE-103, 401 M Street SW., Washington, DC.

**ADDRESS:** Submit written request to be an "interested party" in triplicate, identified by the document control number (OPTS-42002J) to: TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M Street SW., Washington, DC 20460.

**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.

Persons interested in attending the public meeting should notify EPA by telephone on or before July 18, 1989.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of June 8, 1987 (52 FR 21516), EPA issued a final test rule under section 4(a) of TSCA to require health effects testing of VF, VDF, HFP, and TFE. In the final rule, EPA required mutagenicity tests which could trigger either oncogenicity or additional (Tier III) mutagenicity gene testing. In the case of VF, testing was positive for gene mutation effects in the *Drosophila* sex-linked recessive lethal assay (SLRL), triggering testing in the MVSL assay. Similarly, HFP was positive in both the in vivo cytogenetics and the mouse

micronucleus assays, triggering oncogenicity testing. Results of testing on VDF and TFE did not trigger additional testing.

The mutagenicity tests cited for HFP were actually performed prior to publication of the fluoroalkenes final rule, and are summarized therein, but oncogenicity testing for HFP was deferred until after the subchronic assay for HFP required in the final rule was completed and a public program review was held. In the case of the MVSL test requirement for VF, EPA intends to delay requiring test initiation until after a proposed rule published on December 23, 1988, concerning the MVSL and an alternate test, the mouse biochemical specific locus test (MBSL), results in a final rule. Finalization of the MVSL rule is expected in the fall or winter of 1989. VF and VDF are currently undergoing oncogenicity testing as required under the Fluoroalkenes Final Rule.

EPA is publishing this notice to announce a public program review to allow interested parties opportunity to comment on EPA's conclusions regarding testing requirements for VF, for Tier III mutagenicity testing in the MVSL, and for HFP, in the oncogenicity assay.

#### I. Identification of Interested Parties

Those individuals and groups who respond to EPA's notice by the deadlines established in the notice will have the status of "interested parties" for the purpose of this public program review and will have the opportunity to participate in it. Individuals and groups desiring to have the status of "interested parties" for the public program review for MVSL testing of VF and oncogenicity testing of HFP should submit a written request to the Agency at the address given above on or before July 12, 1989.

#### II. Public Meeting

A public meeting will be held at 1 p.m. on July 19, 1989, in Rm. 103, Northeast Mall, EPA Headquarters, 401 M St., SW., Washington, DC, to review the MVSL and oncogenicity testing requirements for VF and HFP, respectively. Persons interested in attending this meeting should notify the EPA TSCA Assistance Office by telephone at the number listed above on or before July 18, 1989.

#### III. Relevant Available Studies

In accordance with the requirements of the Fluoroalkenes Final Rule, all studies completed in fulfillment of the testing requirements of the rule must be submitted to EPA, and all of the studies are then available to the public.

Furthermore, EPA established a rulemaking record for the rule, which included documents and references in support of the rule. This entire docket, except for Confidential Business Information (CBI), is also available to the public. For the purposes of this public program review, the following studies are of particular interest, and can be obtained from the TSCA Public Docket Office at the address given in this notice.

(1) E.I. duPont de Nemours & Company. Evaluation of Hexafluoropropylene in the In Vitro Assay for Chromosome Aberrations in Chinese Hamster Ovary (CHO) Cells. Submitted to U.S. EPA. (July 23, 1986).

(2) E.I. duPont de Nemours & Company. Mutagenicity Evaluation of Hexafluoropropylene in the CHO/HPRT Assay. Submitted to U.S. EPA. (February 3, 1986).

(3) E.I. duPont de Nemours & Company. Ninety-Day Inhalation Toxicity Study in Rats and Mice with Hexafluoropropene. Submitted to U.S. EPA by the Chemical Manufacturers Association. (January 23, 1989).

(4) E.I. duPont de Nemours & Company. Mutagenicity Test on Vinyl Fluoride; *Drosophila Melanogaster* Sex-Linked Recessive Lethal Test. Submitted to U.S. EPA by the Chemical Manufacturers Association (August 15, 1988).

Authority: 15 U.S.C. 2603.

Dated: May 24, 1989.

Gary E. Timm,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-14459 Filed 6-16-89; 8:45 am]

BILLING CODE 6560-50-M

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 88-131; RM-5849, RM-5949]

#### Radio Broadcasting Services; Mason City and Iowa City, Iowa

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** The Commission, at the request of KRNA, Inc., substitutes Channel 231C1 for Channel 230C1 at Iowa City, Iowa, and modifies its license for Station KRNA(FM) to specify operation on the adjacent channel. At

the request of B-Y Communications, Inc., the Commission substitutes Channel 230C1 for Channel 228A at Mason City, Iowa, and modifies its license for Station KNIQ to specify operation on the higher powered channel. Channel 231C1 can be allotted to Iowa City with a site restriction of 21.1 kilometers (13 miles) west to accommodate its desired site. The coordinates for this allotment are North Latitude 41-42-12 and West Longitude 91-46-54. Channel 230C1 can be allotted to Mason City in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter site of Station KNIQ. The coordinates for this allotment are North Latitude 43-08-50 and West Longitude 93-14-39. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** July 28, 1989.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 88-131, adopted May 22, 1989, and released June 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

#### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

#### §73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended by revising the entry for Iowa City, Iowa, by removing Channel 230C1 and adding Channel 231C1. The entry for Mason City, Iowa, is revised by removing Channel 228A and adding Channel 230C1.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-14427 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

[MM Docket No. 88-389; RM-6366]

Radio Broadcasting Services;  
Bozeman, MontanaAGENCY: Federal Communications  
Commission.

ACTION: Final rule.

**SUMMARY:** This document allots FM Channel \*271C2 to Bozeman, Montana, reserving the channel for noncommercial educational use, in response to a petition filed by Eastern Montana College. The coordinates for Channel \*271C2 at Bozeman are 45-40-54 and 111-02-18. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 28, 1989.

## FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media  
Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88-389, adopted May 22, 1989, and released June 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

## List of Subjects in 47 CFR Part 73

Radio broadcasting.

## PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

## § 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Bozeman, Montana, is amended by adding Channel \*271C2.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-14426 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 76

[MM Docket 85-349, GEN Docket No. 87-  
107, RM-6152; FCC 89-162]Carriage of TV Signals on Cable  
Systems and Input Selector Switches  
Used in Conjunction With Cable  
Television ServiceAGENCY: Federal Communications  
Commission.

ACTION: Final rule.

**SUMMARY:** The action taken herein deletes, from the Commission's rules, all mandatory carriage requirements for cable systems. It also reinstates the input selector switch offer and consumer information requirements for cable systems. This action is taken in order to comply with the United States Court of Appeals decision in *Century Communications Corp. v. FCC*, December 11, 1987.

DATES: Effective Date: July 14, 1989.

Compliance Date: Cable systems will now have to comply with these requirements by November 1, 1989.

ADDRESS: Federal Communications  
Commission, Washington, DC 20554.FOR FURTHER INFORMATION CONTACT:  
Scott Roberts, Mass Media Bureau, (202)  
632-6302.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order in MM Docket No. 85-349, GEN Docket 87-107, and RM-6152 adopted May 18, 1989, and released May 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

## Summary of the Order

1. On December 11, 1987, the United States Court of Appeals for the District of Columbia Circuit invalidated the Commission's interim must carry rules for cable television systems, as adopted pursuant to MM Docket No. 85-349, in *Century Communications Corp. v. FCC (Century)*, No. 86-1683, 835 F.2d 292 (D.C. Cir., December 11, 1987). It was unclear, however, whether the court's ruling invalidated all aspects of the Commission's order in that proceeding, that is, whether the ruling extended beyond the interim mandatory carriage obligations to include the input selector switch and consumer education requirements imposed by 47 CFR 76.66.

Therefore, the Commission, on December 23, 1987, filed a motion for clarification of the Century decision with the United States Court of Appeals in order to resolve this matter. In conjunction with that filing, the Commission stayed the requirements of Section 76.66 pending court clarification.

2. On January 29, 1988 the court issued an Order, No. 86-1683, 837 F.2d 517, clarifying that its decision in *Century* does not invalidate the input selector switch and consumer education requirements that were also adopted pursuant to the must carry proceeding. Therein, the court instructed the Commission on remand to make appropriate adjustment to its rules in light of the invalidation of the interim must carry rules.

3. In compliance with the court's ruling and instructions, we are eliminating all those portions of our interim rules pertaining to the mandatory carriage of television broadcast signals on cable systems and are revising other sections of our rules, in particular, those in Section 76.66 pertaining to the input selector switch and consumer education requirements, to eliminate reference to must carry requirements.

4. As part of our action herein, we are revising the date by which cable systems must comply with the input selector switch offer and consumer education requirements, as set forth in § 76.66. In order to provide sufficient lead time that is required by the billing systems used by many cable systems, those systems that have not yet mailed to subscribers the switch offer and consumer education information required under the provisions of § 76.66 that were in effect prior to the stay of the compliance date, will have until November 1, 1989, to fulfill those requirements. Cable systems that have complied with the provisions of § 76.66 in effect prior to the stay, will not be required to do a supplemental mailing, but will have to include the new informational requirement in their next annual consumer information mailing. This information should be provided to all new subscribers, however, as promptly as possible and commence for all subscribers no later than November 1, 1989.

5. Accordingly, *It is ordered* that § 76.5 and §§ 76.55 through 76.70 of the Commission's rules are amended, as shown below, effective July 14, 1989. *It is further ordered* That the Petition for Rule Making (RM-6152) filed jointly by the Association of Independent Television Stations, Inc. and the National Association of Public

Television Stations is dismissed as moot. It is further ordered That cable systems that have already complied with the provisions of § 76.66 in effect prior to the December 23, 1987 stay of the rules, need not do a supplemental mailing to comply with the revised rules. Finally, It is ordered That the Petition for Supplemental Inquiry or Issuance of a Further Notice of Proposed Rule Making filed by Mr. Richard S. Leghorn is denied. Authority for these actions is provided in sections 4(i) and 303 of the Communications Act of 1934, as amended.

#### List of Subjects in 47 CFR Part 76

Cable television.

#### PART 76—(AMENDED)

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 521.

#### § 76.5 [Amended]

2. Section 76.5 is amended by removing paragraphs (d), (j), (jj), (kk) and (ll) in their entirety and redesignating paragraphs (e) through (i) as (d) through (h), and paragraphs (k) through (nn) as (i) through (ii).

3. Section 76.53 is amended by revising the first sentence to read as follows:

#### § 76.53 Reference points.

The following list of reference points shall be used to identify the boundaries of the major and smaller television markets (defined in § 76.5).

#### § 76.55 [Removed]

4. Section 76.55 is removed in its entirety.

#### § 76.56 [Removed]

5. Section 76.56 is removed in its entirety.

#### § 76.58 [Removed]

6. Section 76.58 is removed in its entirety.

7. Section 76.60 is revised in its entirety to read as follows:

#### § 76.60 Carriage of other television signals.

A cable system may carry the signals of any television station including low power television stations, television translator stations, foreign television stations, subscription television broadcasts, satellite distributed program services, direct broadcast satellite stations and programming from any other source. A cable system may also carry any ancillary service transmission

on the vertical blanking interval or the aural baseband of any television broadcast signal including, but not limited to, multichannel television sound and teletext.

8. Section 76.62 is revised in its entirety to read as follows:

#### § 76.62 Manner of carriage.

Where a television broadcast signal is carried by a cable system, the signal shall be carried without material degradation and programs broadcast shall be carried in full, without deletion or alteration of any portion thereof.

#### § 76.64 [Removed]

9. Section 76.64 is removed in its entirety.

10. Section 76.66 is amended by revising paragraphs (c) introductory text and (c)(1); and, removing paragraph (c)(2) and making it reserved to read as follows:

#### § 76.66 Input selector switches and consumer education.

(c) The cable system operator shall provide the following information to each subscriber at the time of installation of cable service and to existing subscribers, in writing, by November 1, 1989, and annually thereafter to all subscribers. Operators may use whatever language they deem appropriate to convey the following:

(1) The cable system is not required to carry any off-the-air broadcast signal; but, of course, may choose to do so; thus,

(2) [Reserved]

11. Section 76.70 is revised to read as follows:

#### § 76.70 Exemption from input selector switch rules.

(a) In any case of cable systems serving communities where no portion of the community is covered by the predicted Grade B contour of at least one full service broadcast television station, or non-commercial educational television translator station operating with 5 or more watts output power and where the signals of no such broadcast stations are "significantly viewed" in the county where such a cable system is located, the cable system shall be exempt from the provisions of § 76.66. Cable systems may be eligible for this exemption where they demonstrate with engineering studies prepared in accordance with § 73.686 of this chapter or other showings that broadcast signals meeting the above criteria are not actually viewable within the community.

(b) Where a new full service broadcast television station, or new

non-commercial educational television translator station with 5 or more watts, or an existing such station of either type with newly upgraded facilities provides predicted Grade B service to a community served by a cable system previously exempt under paragraph (a) of this section, or the signal of any such broadcast station is newly determined to be "significantly viewed" in the county where such a cable system is located, the cable system at that time is required to comply fully with the provisions of § 76.66. Cable systems may retain their exemption under paragraph (a) of this section where they demonstrate with engineering studies prepared in accordance with § 73.686 of this chapter or other showings that broadcast signals meeting the above criteria are not actually viewable within the community.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-14425 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Part 192

[Docket No. PS-97]

RIN 2137-AB 20

### Confirmation or Revision of Maximum Allowable Operating Pressure; Alternative Method; Correction

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration, DOT.

ACTION: Notice of correct amendment number.

SUMMARY: This notice corrects the amendment number of final rule document 89-13388 published in the Federal Register on Tuesday, June 6, 1989 (54 FR 24173). In the document heading on page 24173, the amendment number, "Amdt. 192-60A," is changed to read "Amdt. 192-63."

#### FOR FURTHER INFORMATION CONTACT:

L.M. Furrow 366-2392.

Issued in Washington, DC on June 13, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 89-14398 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 672

[Docket No. 81132-9033]

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Notice of closure.

**SUMMARY:** The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) of pelagic shelf rockfish in the Eastern Regulatory Area of the Gulf of Alaska has been reached. The Secretary of Commerce (Secretary) is prohibiting directed fishing for and further retention of pelagic shelf rockfish by vessels fishing in this area from 12:00 noon, Alaska Daylight Time (a.d.t.), on June 13, 1989, through December 31, 1989.

**DATES:** Effective from 12:00 noon, a.d.t., on June 13, until midnight, Alaska Standard Time, December 31, 1989.

**ADDRESSES:** Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

**FOR FURTHER INFORMATION CONTACT:** Janet E. Smoker, Fishery Management Biologist, 907-586-7230.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for

Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

The 1989 TAC specified for pelagic shelf rockfish in the Eastern Regulatory area is 400 mt (54 FR 6524, February 13, 1989). "Pelagic shelf rockfish" include the following five species of Sebastes: black rockfish (*S. melanops*), blue rockfish (*S. mystinus*), dusky rockfish (*S. ciliatus*), widow rockfish (*S. entomelas*) and yellowtail rockfish (*S. flavidus*). The Regional Director reports that vessels have landed 505 mt of pelagic shelf rockfish through June 8 in the Eastern Regulatory Area; the entire TAC has been harvested.

Therefore, pursuant to § 672.20(c)(2)(i), the Secretary is prohibiting further fishing for the retention of pelagic shelf rockfish effective 12:00 noon, a.d.t., June 13, 1989. Any pelagic shelf rockfish caught in the Eastern Regulatory area after that date must be treated as prohibited species and discarded at sea.

Overharvesting of pelagic shelf rockfish will result unless this notice

takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the address above until June 28, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after that reconsideration, will publish in the **Federal Register** a notice either of continued effectiveness of the adjustment, responding to comments received, or modifying or rescinding the adjustment.

**Classification**

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 672**

Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 13, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-14403 Filed 6-13-89; 4:30 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register

Vol. 54, No. 116

Monday, June 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

### Agricultural Stabilization and Conservation Service

#### Commodity Credit Corporation

7 CFR Parts 709, 1403, 1404, 1408

#### Debt Settlement Policies and Procedures

**AGENCY:** Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend 7 CFR Parts 709, 1403 and 1408 which relate to the administration of Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC) programs in order to set forth the policies and procedures of CCC and ASCS regarding delinquent debts arising out of domestic transactions and the assignment of payments. This proposed rule would set forth the policies and procedures CCC will use to settle debts owed to CCC and other agencies of the United States. To the extent practicable, the proposed rule would provide that CCC policies and procedures would conform to the general guidelines set forth in the Federal Claims Collection Act, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3711, *et seq.*). To the extent practicable, CCC would also follow the provisions of the Federal Claims Collection Standards (4 CFR Parts 101-105) with respect to administrative actions undertaken by CCC to settle claims. In addition, this proposed rule would set forth the manner in which CCC and ASCS payments may be assigned at 7 CFR Part 1404 and delete the current provisions at 7 CFR Part 709.

**DATES:** Comments must be received by July 19, 1989.

**ADDRESS:** Comments concerning this proposed regulation should be addressed to: Director, Fiscal Division,

ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All comments submitted in response to this proposed rule will be available for public inspection, in Room 6094, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8:30 am and 4:00 pm, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Paula Roney, Claims Administration and Contract Procedures Branch, Fiscal Division, ASCS, (202) 447-4061.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs and prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under DR 1512-1. No sunset review date has been set for this regulation because review is ongoing.

This action will not increase the Federal paperwork burden for individuals, small businesses, and others and will not have a significant impact on a substantial number of small entities. Furthermore, neither ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

The Federal Claims Collection Act of 1966 (the Act), as amended by the Debt Collection Act of 1982, (31 U.S.C. 3711, *et*

*seq.*), and the joint regulations promulgated thereunder by the Comptroller General and the Attorney General (4 CFR 101-105) provide minimum standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. The CCC Charter Act, as amended (15 U.S.C. 714, *et seq.*), provides that CCC shall have authority to make final and conclusive settlement and adjustment of any claims by or against it irrespective of the amount at issue. CCC is, therefore, not subject to the provisions of the Federal Claims Collection Act or its implementing regulations. However, it has been CCC policy to follow the Federal Claims Collection Standards (FCCS) to the maximum practicable extent. The FCCS require each federal agency to take aggressive action to collect debts owed it, and to cooperate with other federal agencies in their debt collection activities. Federal agencies are required to promulgate regulations consistent with the standards.

Currently, CCC follows procedures at 7 CFR Part 13 for the offset or withholding of amounts approved by ASCS county committees for disbursement to agricultural producers. In all other cases, offset, withholdings, and stop payment policies at 7 CFR Part 1408 are applicable. For procedures governing referrals of claims to the Department of Justice or the General Accounting Office the procedures in FCCS (4 CFR Parts 101-105) may be followed. The regulations at 7 CFR Part 1403 currently govern CCC policies regarding the assessment of late payment charges, referral of delinquent debts to credit reporting agencies, and referral of delinquent debts to IRS for tax refund offset.

This proposed rule would delete 7 CFR Part 1408 which sets forth the setoff, withholding and stop payment policies of CCC and establish under a single heading at 7 CFR Part 1403, CCC policies and procedures governing the administrative collection, discharge, and referral of debts.

The proposed rule would also protect the right of CCC and ASCS to collect delinquent debts when payments have been assigned by allowing offset of any debts owed to CCC or ASCS by an

assignor before payment is made to an assignee in accordance with the provisions of agricultural programs administered by county and State ASC committees. Currently, offset may only be made of those debts entered on the applicable debt register prior to the date an assignment was accepted by CCC or ASCS. This change in policy would deter the circumvention of offset by such practices as the assignment of payments to friends, relatives, partners, or subsidiary corporations, as well as increase the ability of CCC and ASCS to recoup delinquent debts. This change would apply only to those debts owed to CCC and ASCS; the current procedures would continue to apply to requests for offset received from other federal agencies.

Under the proposed rule, the late payment interest rate CCC would use would be a departure from the standard late payment rate prescribed by 31 U.S.C. 3717, which is based on the Treasury Department's current value of funds rate. The Treasury Department has approved this alternative method of assessing late payment interest. Currently, the late payment interest rate is set by CCC in a notice published in the *Federal Register*. Such rate has been set at a fixed 13 percent and remained constant in spite of a dramatic fluctuation in interest rates in the past six years. This proposed rule would provide that the late payment rate assessed on delinquent debts would be based upon the rate CCC pays Treasury for funds. The late payment rate will be assessed at a rate three percentage points higher than the Treasury rate that is in effect on the date the debt becomes delinquent. In addition, for debts which remain delinquent for ninety (90) days, an additional six percentage points will be assessed.

This proposed rule is necessary to protect the financial integrity of many federal agricultural programs by ensuring the Government will be able to collect, or otherwise settle, debts owed it by various individuals, organizations, and corporations.

In addition, this proposed rule would delete 7 CFR Part 709, which sets forth the manner in which ASCS and CCC payments may be assigned, and set forth at 7 CFR Part 1404 the criteria applicable to the assignment of ASCS and CCC program payments.

#### List of Subjects

##### 7 CFR Part 709

Assignment of payment.

##### 7 CFR Part 1403

Interest on delinquent debts.

##### 7 CFR Part 1404

Assignment of payment.

##### 7 CFR Part 1408

Setoff, Withholding and stop payment policies.

Accordingly, Title 7 of the Code of Federal Regulations is amended as follows:

#### PART 709—[REMOVED]

1. 7 CFR Part 709 is removed.
2. 7 CFR Part 1403 is revised to read as follows:

#### PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

Sec.

- 1403.1 Applicability.
- 1403.2 Administration.
- 1403.3 Definitions.
- 1403.4 Demand for payment of debts.
- 1403.5 Collection by payment in full.
- 1403.6 Collection by installment payments.
- 1403.7 Collection by administrative offset.
- 1403.8 Withholding.
- 1403.9 Late payment interest and administrative charges.
- 1403.10 Waiver of late payment interest and administrative charges.
- 1403.11 Administrative appeal.
- 1403.12 Additional administrative collection action.
- 1403.13 Contact with debtor's employing agency.
- 1403.14 Prior provision of rights with respect to debt.
- 1403.15 Discharge of Debts.
- 1403.16 Referral of delinquent debts to credit reporting agencies.
- 1403.17 Referral of debts to Department of Justice.
- 1403.18 Referring of delinquent debts to IRS for tax refund offset.
- 1403.19 Reporting of discharged debts to IRS.
- 1403.20 Referral of debts to private collection agencies.

Authority: 15 U.S.C. 714b and 714c; 31 U.S.C. 3711-3716 and 3720A.

##### § 1403.1 Applicability.

Except as may otherwise be provided by statute, this part sets forth the manner in which the Commodity Credit Corporation (CCC) will settle and collect debts by and against CCC arising out of domestic transactions.

##### § 1403.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC and the Administrator, ASCS. At the State and county level, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees (herein referred

to as "State and county committees", respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

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

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

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

##### § 1403.3 Definitions.

The following definitions shall be applicable to this part:

"*Accountant certified financial statement*" means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by a certified public accountant, a bank, or other such qualified individual or entity and by the debtor, under penalty of perjury.

"*Administrative charges*" means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

"*Administrative offset*" means deducting money payable or held by the United States Government, or any agency thereof, to satisfy in whole or in part a debt owed the Government, or any agency thereof.

"*ASCS*" means the Agricultural Stabilization and Conservation Service of USDA.

"*CCC*" means the Commodity Credit Corporation.

"*Claim*" means an amount of money or property which has been determined by CCC, after a notice of delinquency and a demand for the payment of the

debt has been made by CCC, to be owed to CCC by any person other than a Federal agency.

"Credit reporting agency" means:

(1) A reporting agency as defined at 4 CFR 102.5(a), or

(2) Any entity which has entered into an agreement with the Department of Agriculture (USDA) concerning the referral of credit information.

"Debt" means any amount owed to CCC or owed by CCC which has not been satisfied through payment or otherwise.

"Debt register" refers to the account, balance sheet, file, ledger, data file, or similar record of debts owed to CCC, ASCS, or any other Government Agency with respect to which collection action is being pursued, and which is maintained in an ASCS office.

"Debtor-certified financial statement" means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by the debtor, under penalty of perjury.

"Delinquent debt" means: (1) Any debt owed to CCC that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or (2) Any debt that has not been paid by the date specified in an initial notification of indebtedness mailed or hand-delivered pursuant to § 1403.4.

"Discharged debt" means any debt, or part thereof, which CCC has determined is uncollectible.

"Late payment interest rate" means the amount of interest charged on delinquent debts and claims. The late payment interest rate shall be determined as of the date a debt becomes delinquent and shall be a rate three (3) percentage points above the monthly borrowing rate of interest that CCC pays to the United States Treasury for funds.

"Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, the Federal Government or a State government, or any agency thereof.

"Salary offset" means the deduction of money from the current pay account of a present or former Government employee payable by the United States Government to, or held by the Government for, such person to satisfy a debt that person owes the Government.

"Settlement" means any final disposition of a debt or claim.

"System of records" means a group of any records under the control of CCC or ASCS from which information is

retrieved by the name of the individual, organization or other entity or by some identifying number, symbol, or other identification assigned to the individual, organization or other entity.

"Withholding" means the taking of action to temporarily prevent the payment of all amounts to a debtor under one or more contracts or programs.

#### § 1403.4 Demand for payment of debts.

(a) When a debt is due CCC, the debtor shall be mailed or hand-delivered an initial written demand for payment of such amount. If the debt is not paid in full by the date specified in the initial demand letter, or if a repayment schedule acceptable to CCC has not been arranged with the debtor, then the initial demand shall be followed by two subsequent written demands at not more than 30-day intervals, unless it is determined by CCC that further demands would be futile and the debtor's response does not require rebuttal. The initial or subsequent demand letters shall specify the following:

(1) The basis for and the amount of the debt determined to be due CCC, including the principal, applicable interest, costs and other charges;

(2) CCC's intent to establish an account on a debt register 30 days after the date of the letter, or other applicable period of time, if the debt is not paid within that time;

(3) The applicable late payment interest rate.

(i) If a late payment interest rate is specified in the contract, agreement or program regulation, the debtor shall be informed of that rate and the date from which the late payment interest has been accruing;

(ii) If a late payment interest rate is not specified in the contract, agreement or program regulation, the debtor shall be informed of the applicable late payment interest rate set out in § 1403.9.

(4) CCC's intent to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or ASCS payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) If not previously provided, the debtor's right to request administrative review by an authorized CCC official, and the proper procedure for making such request. If the request relates to the:

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter;

(ii) Appropriateness of reporting to a credit reporting agency, it must be made within 30 days from the date of the letter; or

(iii) Appropriateness of referral to IRS for tax refund offset, it must be made within 60 days from the date of the letter.

(6) The debtor's right to a full explanation of the debt and to dispute any information in the records of CCC concerning the debt;

(7) That CCC maintains the right to initiate legal action to collect the amount of the debt;

(8) That if any portion of the debt remains unpaid or if a repayment schedule satisfactory to CCC has not been arranged 90 days after the due date specified in the initial demand letter, then an increased interest rate shall be assessed on the unpaid balance of the debt as prescribed in § 1403.9(e);

(9) CCC's intent, if applicable, under § 1403.16, to report any delinquent debt to a credit reporting agency no sooner than 60 days from the date of the letter;

(10) CCC's intent, if applicable, under § 1403.18, to refer any delinquent debt to the Internal Revenue Service, no sooner than 60 days from the date of the letter, to be considered for offset against any tax refund due or to become due the debtor.

(b) When CCC deems it necessary to protect the Government's interest, written demand may be preceded by other appropriate actions.

#### § 1403.5 Collection by payment in full.

(a) Except as CCC may provide in accordance with § 1403.6, CCC shall collect debts owed to the Government, including applicable interest, penalties, and administrative costs, in full, whenever feasible whether the debt is being collected by administrative offset or by another method, including voluntary payment. If a debt is paid in one lump sum after the due date, CCC will impose late payment interest, as provided in § 1403.9, unless such interest is waived as provided in § 1403.10.

(b) Except as may otherwise be provided by CCC in individual program regulations, contracts or agreements, if a debt is determined to exist after the completion of an administrative appeal, the interest rate applicable to the debt on the date written notice of the initial determination from which the appeal arose was mailed or hand-delivered to the debtor shall continue to apply from the date of the notice to the issuance of the final administrative determination. If

no other interest rate is applicable, interest at the rate charged by the U.S. Treasury for funds borrowed by CCC on the date written notice of the initial determination was mailed or hand-delivered shall be assessed from the date of the notice to the issuance of the final administrative determination. If the debt is not paid within 30 days of such determination, CCC will assess late payment interest as prescribed in §§ 1403.9 and 1403.10 from the date of the final determination.

#### § 1403.6 Collection by installment payments.

(a) Payments in installments may be arranged, at CCC's discretion, if a debtor furnishes satisfactory evidence of inability to pay a claim in full by the specified date. The size and frequency of installment payments shall:

(1) Bear a reasonable relation to the size of the debt and the debtor's ability to pay; and

(2) Normally be of sufficient size and frequency to liquidate the debt in not more than three years.

(b) Except as otherwise determined by CCC, no installment arrangement will be considered unless the debtor submits a debtor certified financial statement which reflects the debtor's assets, liabilities, income, and expenses. CCC may require an accountant-certified financial statement in lieu of a debtor-certified financial statement. The financial statement shall not be required to be submitted sooner than 15 business days following its request by CCC.

(c) All installment payment agreements shall be in writing and may require the payment of interest at the late payment interest rate in effect on the date such agreement is executed. The installment agreement shall specify all the terms of the arrangement and include provision for accelerating the debt in the event the debtor defaults. A confession of judgment provision may be included in the agreement.

(d) CCC may deem a repayment plan to be abrogated if the debtor fails to comply with its terms.

(e) If the debtor's financial statement or other information discloses the ownership of assets which are not encumbered, the debtor may be required to secure the payment of an installment note by executing a security agreement and financing agreement which provides CCC a security interest in the assets until the debt is paid in full.

(f) If the debtor owes more than one debt to CCC, CCC may allow the debtor to designate the manner in which a voluntary installment payment is to be applied. If the debtor does not designate the application of a voluntary

installment or partial payment, the payment will be applied to such debts as determined by CCC.

#### § 1403.7 Collection by administrative offset.

(a) The provisions of this section shall apply to all debts due CCC except as otherwise provided in this part and Part 1404 of this chapter. This section is not applicable to:

(1) CCC requests for administrative offset against money payable to a debtor from the Civil Service Retirement and Disability Fund and CCC requests for salary offset against a present or former employee of the Federal Government which shall be made in accordance with regulations at Part 3 of this title;

(2) CCC requests for administrative offset against a Federal income tax refund payable to a debtor which shall be made in accordance with § 1403.18;

(3) Cases in which CCC must adjust, by increasing or decreasing, a payment which is to be paid under a contract in order to properly make other payments due by CCC; and

(4) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by statute.

(b) Debts due CCC shall be collected by administrative offset from amounts payable by CCC when:

(1) The debtor has been provided written notification of the basis and amount of the debt and has been given an opportunity to make payment. Such written notification and opportunity includes notice of the right to pursue an administrative appeal in accordance with Part 780 of this title or any other applicable appeal procedures;

(2) The debtor has been provided an opportunity to request to inspect and copy the records of CCC related to the debt;

(3) The debtor has been notified in writing that the debt will be collected by administrative offset if not paid;

(4) The debt has not been delinquent for more than ten years or legal action to enforce the debt has not been barred by an applicable period of limitation, whichever is later; and

(5) The debtor has not disputed the validity or the amount of the debt, or, if disputed:

(i) The debtor has completed the administrative appeal procedure at Part 780 of this Title or any other applicable appeal procedure, or

(ii) An authorized CCC claims official or claims officer:

(A) Determines that there is no reasonable basis to support the debtor's position; or

(B) Approves the offset and certifies in writing that a repayment agreement satisfactory to CCC cannot be effected and court adjudication as to the proper payee or other program operations is not required.

(c) Administrative offset shall also be effected against amounts payable by CCC:

(1) When requested or approved by the Department of Justice; or

(2) When a person is indebted under a judgment in favor of CCC.

(d) Debts due CCC from carriers for overcharges shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(2) The period of limitation prescribed at 49 U.S.C. 11706(f) has not expired.

(e) Debts due CCC from carriers for loss or damage shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) Demand for payment was made on the carrier within the period of time specified in the bill of lading;

(2) The carrier has declined payment of the debt without reasonable justification; and

(3) The period of limitation prescribed in the bill of lading has not expired.

(f) Any overcharge or loss or damage debt due CCC on which the applicable period of limitation has run may be offset against any amounts owing by CCC to the carrier which are subject to a defense of limitation.

(g) A payment due any person may be offset where there is a breach of a contract or a violation of CCC program requirements, and offset is considered necessary, by CCC, to protect the financial interests of the Government.

(h) In the case of any procurement contract with CCC which provides for invoicing at the time of shipment with delivery to be made at designated destination points where:

(1) Payment is made to the contractor prior to receipt of evidence of delivery, and

(2) CCC thereafter determines that the Contractor is indebted to CCC because of losses sustained from damage to or deterioration of the commodity while in transit and prior to delivery, CCC may offset such indebtedness against amounts due and payable to the Contractor under any other contract with CCC providing the Contractor has not assigned the proceeds of such contract in accordance with Part 1404 of this chapter.

(i) CCC may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by (b) (1)-(3) of this section if:

(1) Failure to take the offset would substantially prejudice CCC's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(j)(1) Debts due any agency other than CCC shall be offset against amounts payable by CCC to a debtor where the U.S. Department of Justice, the General Accounting Office, or the other agency has submitted a written request for offset which is mailed or hand-delivered to the appropriate ASCS State office, Kansas City Management office or Kansas City Commodity office. Such written request must:

(i) Bear the signature of an authorized representative of the requesting agency;

(ii) Include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with;

(iii) State the name, address (including county), and, where legally available, the social security number of the debtor, and a brief description of the basis of the debt, including identification of the judgment, if any.

(iv) State the amount of the debt separately as to principal, interest, penalties, and administrative costs. Interest, if any, shall be computed on a daily basis to a date shown in the request. The amount to be offset shall not exceed the principal sum owed by the debtor, plus interest computed in accordance with the request, and any late payment charge interest, penalties and administrative costs that have been assessed;

(v) Certify that the debtor has not filed for bankruptcy. If the debtor has filed for bankruptcy, a copy of the order of the bankruptcy court relieving the agency from the automatic stay must be included; and

(vi) State the name, address, and telephone number of a contact person within the agency and the address to which payment should be sent.

(2) Unless prohibited by law, the head of an agency, or a designee, may defer or subordinate in whole or in part the right of the agency to recover through offset all or part of any indebtedness to such agency, or may withdraw a request for offset. Notice of such action must be sent to the appropriate ASCS office.

(k)(1) After CCC has complied with the provisions of this part, CCC shall request other agencies of the

Government to offset amounts payable by them to persons indebted to CCC.

(2) In the case of a request to IRS for a tax refund offset, the provisions at § 1403.18 shall apply.

(l)(1) Debts shall be collected by offset in the following order of priority without regard to the date of the request for such collection:

(i) Debts to CCC.

(ii) Debts to other agencies of the Department of Agriculture as determined by CCC.

(iii) Debts to other agencies as determined by CCC.

(2) In the case of multiple debts involving the same debtor, CCC may, at its discretion, deviate from the usual order of priority in applying recovered amounts to debts owed other agencies when considered to be in the Government's best interest. Such decision shall be made by CCC based on the facts and circumstances of the particular case.

(m)(1) No amounts payable to a debtor by CCC shall be paid to an assignee until there have been collected any amounts owed by the debtor except as provided in this section.

(2) With respect to a payment which is assigned in accordance with Part 1404 of this Chapter by execution of Form CCC-36, such payment shall be subject to offset for any debt owed to CCC or ASCS without regard to the date notice of assignment was accepted by CCC or ASCS.

(3) With respect to a payment which is assigned in accordance with Part 1404 of this Chapter by execution of Form CCC-252, offset shall be made: (i) Of any debt of the assignor entered on the debt register of the applicable ASCS office prior to the filing of such form with CCC or ASCS, or (ii) at anytime regardless of the date of filing of such form with CCC or ASCS if the debt which is the basis for the offset arises under the same contract under which the payment is earned by the assignor.

(4) Offset shall be made, if the Internal Revenue Service so requests or has served a Notice of levy, of any amounts for which the assignor is indebted to the United States for taxes, for which a notice of lien was filed in accordance with the provisions of the Internal Revenue Code prior to the date the notice of assignment was accepted by CCC or ASCS. The burden of determining whether a notice of lien has been filed shall be upon the assignee.

(5) With respect to all other Federal agencies, offset shall be made of any amounts due any other Federal agency which are entered on the debt register of the appropriate ASCS office prior to the

date the notice of assignment was accepted by CCC or ASCS.

(6) Any amount due and payable to the assignor which remains after deduction of amounts paid to the assignee shall be available for offset.

(n) Amounts recovered by offset for CCC and ASCS debts but later found not to be owed to the Government shall be promptly refunded.

(o) Interest shall not be paid on amounts offset but later found not to be owed to the Government unless required by statute, regulation, contract, agreement, or as may be determined by the Executive Vice President, CCC or a designee.

(p) The debtor shall be notified whenever any offset action has been taken.

(q) Offsets made pursuant to this section shall not deprive a debtor of any right he might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(r) Any action authorized by the provisions of this section may be taken against amounts payable to a debtor who operates under more than one name, provided there is identical ownership, or CCC determines that the debtor has established an entity for the purpose of avoiding the payment of the claim or debt.

(s) The amount to be offset shall not exceed the actual or estimated amount of the debt, including interest, administrative charges, and penalties, unless the Department of Justice requests that a larger specified amount be offset.

(t) Offset action will not be taken against payments when:

(1) The payment represents loan or purchase proceeds for a commodity which is subject to the rights of the holder of a prior valid enforceable lien. However, any amount that exceeds the amount of the prior lien shall be available for offset.

(2) A debt has been discharged as provided in § 1403.15.

(3) The amount payable to the debtor is used to satisfy a prior lien on property pledged as collateral for a CCC loan or sold to CCC. However, any amount exceeding the amount of the prior lien shall be available for offset.

(4) CCC determines such action will unduly interfere with the administration of a CCC or ASCS program.

(5) The debt has been delinquent for more than ten years or legal action to enforce the debt due CCC is barred by an applicable period of limitation, whichever is later.

**§ 1403.8 Withholding.**

(a) Withholding of a payment prior to the completion of an applicable offset procedure shall be made from amounts payable to a debtor by CCC to ensure that the interests of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States only if CCC determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC;

(2) There is substantial evidence of violations of criminal or civil frauds statutes and criminal prosecution or civil frauds action is of primary importance to program operations of CCC;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of CCC;

(5) The facts available are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of CCC has been obtained; or

(7) A request has been made by the Department of Justice.

(c) Except for debts due CCC or ASCS, withholding action by CCC on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

**§ 1403.9 Late payment interest and administrative charges.**

(a)(1) The provisions of this section are applicable to all persons whose debt to CCC becomes delinquent unless the debtor and CCC agree otherwise.

(2) Late payment interest provisions of this section shall not apply:

(i) To debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities shall be charged in accordance with applicable statutes or, if none are applicable, at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent;

(ii) If an applicable statute, regulation, agreement or contract either prohibits the charging of such interest or specifies the interest or charges applicable to the debt involved;

(iii) If the late payment interest is waived by CCC.

(b) CCC will assess late payment interest on the full amount of delinquent debts. For purposes of this section, the term "full amount of the delinquent debt" means the sum of the principal, accrued regular loan interest or accrued program interest, and any other charges which are otherwise due and owing to CCC on the delinquent debt at the time the late payment interest is assessed, except as provided in paragraphs (a)(2) and (d)(3) of this section.

(c)(1) The late payment interest shall be expressed as an annual rate of interest which CCC charges on delinquent debts. The late payment interest rate shall be three (3) percentage points above the monthly borrowing rate of interest that CCC pays to the United States Treasury for funds, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section.

(d)(1) When a debt results from a statute, regulation, contract or other agreement with specific provisions for late payment interest and payment due date, late payment interest shall accrue on the amount of the debt from the first day the debt became delinquent, unless otherwise provided by statute.

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor.

(3) The rate of late payment interest initially assessed will be fixed for the duration of the indebtedness, except when a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. CCC may then set a new rate of interest which reflects the rate of interest that CCC pays to the United States Treasury for funds at the time the new agreement is executed. All charges which accrued, but which were not collected, under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

(4) The late payment interest on delinquent debts will accrue on a daily basis.

(e) Except as specified in paragraph (a)(2) of this section, an additional interest rate of six (6) percent per annum will be assessed on any portion of a debt which remains unpaid ninety (90) days after the date described in paragraphs (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to CCC has been agreed upon. Such rate will be assessed retroactively from the date of delinquency and applied on a daily

basis to all amounts due on the debt including the principal balance of the debt plus regular interest, late payment interest and other charges. Such rate shall continue to accrue until the delinquent debt has been paid.

(f) CCC shall assess as administrative charges the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

(g) When a debt is paid in partial or installment payments, payments will be applied first to additional interest assessed in accordance with paragraph (e) of this section and administrative charges, second to assessed late payment interest, and third to outstanding principal.

**§ 1403.10 Waiver of late payment interest and administrative charges.**

(a) CCC shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) Assessment and collection of late payment interest, additional interest and administrative charges under this part may be waived by CCC in full or in part, if it is determined that such action is in the best interest of CCC.

**§ 1403.11 Administrative appeal.**

If the opportunity to appeal the determination has not previously been provided under Parts 24 or 780 of this title or any other appeal procedure, a debtor may obtain an administrative review under Part 780 of this title of CCC's determination concerning the existence or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of CCC's initial demand letter.

**§ 1403.12 Additional administrative collection action.**

Nothing contained in this part shall preclude the use of any other administrative remedy which may be available to CCC to collect debts owed to the Government.

**§ 1403.13 Contact with debtor's employing agency.**

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast

Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, CCC will contact the employing agency to arrange for payment of the debt by allotment or otherwise, in accordance with section 206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469.

**§ 1403.14 Prior provision of rights with respect to debt.**

CCC will not provide an administrative appeal with respect to issues which were subject to administrative review at the debtor's request as provided under another statute or regulation before:

- (a) Effecting administrative offset;
- (b) Referring the debt to private collection or credit reporting agencies;
- (c) Referring the debt to OPM for salary offset against the current pay of a present or former Government employee; or
- (d) Referring the debt to IRS for tax refund offset.

**§ 1403.15 Discharge of debts.**

(a) Except as required by other applicable regulation or statute, a debt or part thereof owed CCC shall be discharged and the records and accounts on that debt closed in the following situations:

(1) When an obligation or part thereof is discharged in bankruptcy;

(2) When an obligation or part thereof is the subject of a final judgment entered by a court of competent jurisdiction which is adverse to CCC;

(3) When a debt or part thereof is compromised and paid, the amount of such compromise;

(4) When collection of a debt by administrative offset is barred in accordance with § 1403.7(t)(5).

(b) A debt or part thereof owed CCC may be discharged and the records and accounts on that debt closed when the Controller, CCC, has determined that such action is in the best interest of CCC.

(c) A claims official or claims officer may discharge a delinquent debt if such debt arises under the terms of the authority delegated to such official or officer in the following circumstances:

(1) The delinquent debt is owed an entity which has been liquidated or dissolved and no legal remedy is feasible.

(2) The delinquent debt is owed by an individual who:

- (i) Is declared legally insane or incompetent;
- (ii) Possessed of no assets or other means of payment; and

(iii) Possessed of no reasonable prospects of being able to pay the debt in the future.

(3) The delinquent debt was incurred by an individual who is deceased, and from whose estate recovery cannot be made.

(d) Debts discharged in accordance with this section may be reported to the Internal Revenue Service pursuant to § 1403.19.

**§ 1403.16 Referral of delinquent debts to credit reporting agencies.**

(a) This section specifies the procedures that will be followed by CCC and the rights that will be afforded to debtors when CCC reports delinquent debts to credit reporting agencies.

(b) Before disclosing information to a credit reporting agency in accordance with this part, CCC shall review the claim and determine that it is valid and delinquent.

(c) Before a debt may be referred to a credit reporting agency, the debtor must be notified, pursuant to § 1403.4, of CCC's intent to make such a report. Such notification shall include:

(1) CCC's intent to disclose to a credit reporting agency that the debtor is responsible for the debt, and that such disclosure will be made not less than 60 days after notification to such debtor.

(2) The information intended to be disclosed to the credit reporting agency under paragraph (g)(1) of this section.

(3) The debtor's right to enter a repayment agreement on the debt, including, at the discretion of CCC, installment payments, and that if such an agreement is reached, the debt will not be referred to a credit reporting agency.

(4) The debtor's right to review of this action in accordance with paragraph (i) of this section.

(d) The debtor shall be notified, in writing at the debtor's last known address, when CCC has reported any delinquent debt to a credit reporting agency.

(e)(1) CCC shall notify each credit reporting agency to which an original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim.

(2) CCC shall promptly verify or correct, as appropriate, information about the debt on request of a credit reporting agency. The records of the debtor shall reflect any correction resulting from such request.

(f) Information reported to a credit reporting agency on delinquent debts shall be derived from systems of records maintained by CCC.

(g) CCC shall limit delinquent debt information disclosed to credit reporting agencies to:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

(h) Reasonable action shall be taken to locate a debtor for whom CCC does not have a current address before reporting delinquent debt information to a credit reporting agency.

(i)(1) Before disclosing delinquent debt information to a credit reporting agency, CCC shall, upon request of the debtor, provide for a review of the debt, including an opportunity for reconsideration of the initial decision concerning the existence or amount of the claim, in accordance with § 1403.11. This review shall only consider defenses or arguments which were not available or could not have been available at any previous appeal proceeding permitted under § 1403.11.

(2) Upon receipt of a request for review within 30 days from the date of notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, CCC shall suspend its schedule for disclosure to a credit reporting agency until a final decision regarding the appropriateness of disclosure to a credit reporting agency is made.

(3) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, the debtor shall be notified of the scheduled date on or after which the debt will be referred to the credit reporting agency. The debtor will also be notified of any changes from the initial notification in the information to be disclosed.

(j)(1) In accordance with guidelines established by the Executive Vice President, CCC, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in paragraph (g) of this section.

(2) The agreements entered into by USDA and credit reporting agencies shall provide the necessary assurances to CCC that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(3) CCC shall not report delinquent debt information to credit reporting agencies when:

(i) The debtor has entered a repayment agreement covering the debt with CCC, and such agreement is still valid; or

(ii) CCC has suspended its schedule for disclosure of delinquent debt information pursuant to paragraph (i)(2).

(k) Disclosures made under this section shall be in accordance with the requirements of the Privacy Act, as amended (5 U.S.C. 552a).

**§ 1403.17 Referral of debts to Department of Justice.**

Debts which cannot be collected in accordance with these regulations may be referred to the Department of Justice for collection action.

**§ 1403.18 Referring delinquent debts to IRS for tax refund offset.**

CCC may refer legally enforceable delinquent debts to IRS to be offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

**§ 1403.19 Reporting discharged debts to IRS.**

(a) In accordance with IRS regulations, CCC shall report to IRS as discharged debts on IRS Form 1099-G only the amounts specified in paragraph (b) of this section.

(b) The following discharged debts may be reported to IRS:

(1) The amount of a debt discharged under a compromise agreement between CCC and the debtor, except for compromises made due to doubt about the Government's ability to prove its case in court for the full amount of the debt.

(2) The amount of a debt discharged by the running of the statutory period of limitation for collecting the debt by administrative offset specified in 31 U.S.C. 3716.

(3) The amount of a debt discharged by CCC in accordance with § 1403.15(b).

**§ 1403.20 Referral of debts to private collection agencies.**

If CCC's collection efforts have been unsuccessful after 90 days and the delinquent debt remains unpaid, CCC may refer the debt to a private collection agency for collection.

3. The following new Part 1404 is added to Chapter XIV of the Code of Federal Regulations:

**PART 1404—ASSIGNMENT OF PAYMENTS**

Sec.

1404.1 General statement.

1404.2 Definitions.

1404.3 Payments which may be assigned.

Sec.

1404.4 Execution of assignment form.

1404.5 Payment assigned not to be discounted.

1404.6 Payment to the assignee.

1404.7 Misrepresentations.

1404.8 Liability of the Secretary or disbursing agents.

1404.9 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 590h(g).

**§ 1404.1 General statement.**

This part sets forth the manner in which a person may assign a cash payment which is made by the Agricultural Stabilization and Conservation Service (ASCS) or the Commodity Credit Corporation (CCC). Such payments may only be assigned in the manner set forth in this part.

**§ 1404.2 Definitions.**

(a)(1) "Assignee" means any person, including any agency of the Federal Government, to whom an assignment of an ASCS or CCC payment is made in accordance with this part.

(2) "Assignor" means any person who is the recipient of a payment from ASCS or CCC who assigns the payment to another person in accordance with this part.

(3) "Payment" means a cash payment and excludes (i) any payment made in accordance with Part 1470 of this title; and (ii) price support loan or purchase agreement proceeds.

(b) The terms defined in Parts 719, 1413, 1421 and 1427 shall also be applicable to this part.

**§ 1404.3 Payments which may be assigned.**

(a) Except as otherwise provided in this part or in individual program regulations, and contracts and agreements entered into by ASCS or CCC, any payment due a person from ASCS or CCC may be assigned.

(b)(1) A payment which is made to a producer in accordance with 7 CFR Parts 701 and 1413 may not be assigned to pay or secure any preexisting indebtedness.

(2) Payments made in accordance with 7 CFR Parts 701 and 1413 may be assigned only as security for cash or advances to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice, for the current crop year. To finance making a crop means (i) to finance the planting, cultivating, or harvesting of a crop, including the purchase of equipment required therefor and the payment of cash rent for land used therefor, or (ii) to provide food, clothing, and other

necessities required by the producer or persons dependent upon the producer.

(3) Nothing contained herein shall be construed to authorize an assignment given to secure the payment of the whole or any part of the purchase price of a farm or the payment of the whole or any part of a fixed commodity rent for a farm.

**§ 1404.4 Execution of assignment form.**

(a)(1) The assignment of any ASCS or CCC payment must be made by the execution of Form CCC-36 or Forms CCC-251 and CCC-252. Form CCC-36 is applicable to payments made under programs administered in accordance with 7 CFR Parts 701, 704, 1413, 1430, 1468, 1472 and 1475. Such form is also applicable to any other program which is administered by a county ASC committee. Forms CCC-251 and 252 are applicable to all other CCC programs and contracts.

(2)(i) To be recognized by ASCS or CCC, Form CCC-36 must be filed in the county ASCS office prior to the time the county committee approves the making of the payment covered by the assignment. To be recognized by ASCS or CCC, Forms CCC-251 and 252 must be filed with the ASCS or CCC office from which the payment will be made prior to the making of the payment. Such a form may not be filed with ASCS or CCC if the payment to be assigned is the subject of an administrative appeal.

(ii) Form CCC-36 or Forms CCC-251 and 252 must be signed by both the assignor and the assignee. With respect to Form CCC-36, the assignor's signature must be witnessed by a member of the county ASC committee for the county where the farm is located, or by an employee of the county committee, unless the assignee is a bank whose deposits are insured by the Federal Deposit Insurance Corporation, the Farmers Home Administration, or a production credit association supervised by the Farm Credit Administration, in which case the assignment may be witnessed by a bonded officer of such lending institution.

(3) The assignor and the assignee shall promptly notify the appropriate ASCS or CCC office of any change affecting the assignment.

**§ 1404.5 Payment assigned not to be discounted.**

(a) With respect to assignments made by execution of Form CCC-36, if interest is charged by the assignee on the amount advanced, the rate of interest must not be in excess of the maximum rate lawfully chargeable under the law of the State where the farm is located

(b) The payment assigned shall not be discounted by charging the assignor more than the current cash price for any supplies furnished or in any other manner whatsoever. Interest may be deducted by the assignee in advance from any cash advancement.

**§ 1404.6 Payment to the assignee.**

(a)(1) The assignee shall be paid the smaller of the amount specified on Form CCC-36 or CCC-251 or the amount of the payment earned under the program covered by the assignment. Any indebtedness owed by the assignor to CCC, ASCS, or any other agency of the United States shall be subject to offset.

(2) Any indebtedness owed by the assignor to CCC or ASCS shall be offset from any payment which is owed by CCC or ASCS without regard to the date of filing of a Form CCC-36 with the applicable ASCS or CCC office. Except as provided in paragraph (a)(4) of this section, any indebtedness owed by the assignor to CCC or ASCS shall be offset from any payment which is owed by CCC or ASCS if such indebtedness was entered on the debt register of the applicable ASCS or CCC office prior to the date of the filing of Forms CCC-251 and 252 with the applicable ASCS or CCC office.

(3) Any indebtedness owed by the assignor to any agency of the United States other than CCC or ASCS which was entered on the debt register of the applicable ASCS or CCC office prior to the date of filing of the Form CCC-36 or Forms CCC-251 and 252 with such office shall be offset prior to the making of any payment to the assignee.

(4) Any indebtedness arising under a contract between the assignor and ASCS or CCC which is the subject of the assignment shall be offset from the payment prior to the making of any payment to the assignee without regard to the date of the filing of Form CCC-36 or Forms CCC-251 and 252 with the appropriate ASCS or CCC office.

(b) If ASCS or CCC makes a payment to the assignee which is in excess of the amount stated on Form CCC-36 or Forms CCC-251 and 252, the assignee shall refund to ASCS or CCC any amount by which the payment made to the assignee exceeds the amount specified on such form.

**§ 1404.7 Misrepresentations.**

If ASCS or CCC has reason to believe that any material misrepresentation was made by the assignor or the assignee in executing Forms CCC-36, CCC-251 or CCC-252, ASCS or CCC shall forthwith give notice thereof to the assignor and the assignee. If, after investigation and opportunity for the assignor and

assignee to be heard, ASCS or CCC finds that any material misrepresentation was in fact made, ASCS or CCC shall notify the assignor and the assignee of such finding, and void such assignment, and insofar as concerns ASCS, CCC or any other agency of the United States, the assignment shall be of no effect.

**§ 1404.8 Liability of the Secretary or disbursing agents.**

Neither the United States, the CCC, the Secretary nor any disbursing agent shall be liable in any suit if payment is made to the assignor without regard to the existence of any assignment, and nothing contained herein shall be construed to authorize any suit against the United States, the CCC, the Secretary or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

**§ 1404.9 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 35 and have been assigned OMB control number

**PART 1408—[REMOVED]**

4. 7 CFR Part 1408 is removed.

Signed at Washington, DC, on June 9, 1989.

Vern Neppi,

*Acting Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 89-14310 Filed 6-16-89; 8:45 am]

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**Agricultural Marketing Service**

**7 CFR Part 1076**

[DA-89-022]

**Milk in the Eastern South Dakota Marketing Area; Proposed Suspension of Certain Provisions of the Order**

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

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This notice invites written comments on a proposal to suspend portions of the Eastern South Dakota Federal milk order. The provisions relate to the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the

provisions was requested by a cooperative association representing most of the producers supplying the market to prevent uneconomic movements of milk. The proposed suspension would be for the months of August 1989 through February 1990.

**DATES:** Comments are due on or before July 5, 1989.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Eastern South Dakota marketing area is being considered for August 1989 through February 1990:

In § 1076.13, paragraphs (c)(2) and (3).

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20250-6456, by the 15th day after publication of this notice in the Federal Register. The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)). The period for filing comments is limited to 15 days

because a longer period would not provide the time needed to make the rule effective by August 1989, the first month of the period which limits diversions to 35 percent.

#### Statement of Consideration

Land O' Lakes Inc. (LOL), an association of producers that supplies most of the market's fluid milk needs and handles most of the market's reserve milk supplies, requested the suspension. The suspension would remove for August 1989 through February 1990 the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants. A similar suspension was in effect 1988-1989.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of August through February.

LOL indicates that operation of the 35-percent diversion limit during August through February would mean that at least 65 percent of its milk would have to be delivered to pool plants. LOL estimates, moreover, that only approximately 50 percent of its milk will be needed at distributing plants. The balance would have to be delivered to pool plants, unloaded, reloaded and then shipped to other plants merely to qualify the milk for pooling. The additional handling and hauling costs would be incurred by LOL with no offsetting benefits to other market participants, according to LOL. In addition, the cooperative states, additional pumpings of milk can be expected to cause deterioration in its quality.

LOL states that even in the absence of diversion limitations, the cooperative must continue to deliver at least 35 percent of its producer receipts to pool distributing plants in order to pool all milk. The cooperative affirms its commitment to supplying the total needs of Eastern South Dakota distributing plants.

#### List of Subjects in 7 CFR Part 1076

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1076 continues to read as follows:

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

Signed at Washington, DC, on June 13, 1989.

J. Patrick Boyle,  
Administrator.

[FR Doc. 89-14400 Filed 6-16-89; 8:45 am]

BILLING CODE 3410-02-M

#### 7 CFR Part 1139

[DA-89-024]

#### Milk in the Great Basin Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

**SUMMARY:** This notice invites written comments on a proposal to suspend indefinitely the Great Basin order's limit on the amount of milk that may be purchased by a producer-handler from pool plants or other order plants. The proposed suspension was requested by a producer-handler under the Great Basin Federal milk order.

**DATES:** Comments are due on or before July 5, 1989.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers.

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of

milk in the Great Basin marketing area is being considered for an indefinite period beginning with the month of July 1989:

In § 1139.10(b)(1)(ii), the words "in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month."

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, the 15th day after publication of this notice in the Federal Register. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures and include July 1989 in the suspension period. It is important that July be included in order to satisfy the demand for fluid milk products by groups and facilities with seasonal needs.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

#### Statement of Consideration

The proposed suspension would remove indefinitely from the Great Basin milk order the limit on the amount of milk that a producer-handler may receive from pool plants or other order plants and still maintain its producer-handler status. The suspension was requested by Glen E. Brown, owner of Brown Dairy, Inc., a producer-handler located in Coalville, Utah.

Mr. Brown asserts that it is virtually impossible to manage a dairy herd in a manner that allows a producer-handler to market all of its production in a regular manner, and that removal of the limit on purchases is the only logical way to provide a producer-handler the means of marketing all of his production. Such a solution, he states, would eliminate the need to dump surplus milk onto the market and would foster orderly marketing to the consumer.

Mr. Brown points out that a producer-handler has no way of knowing the full extent of his allowable purchases until the current month is completed, limiting his ability to purchase the entire 5 percent of his route dispositions that is permitted. Further, he states, the limit makes it difficult to provide fluid milk products to groups and facilities with seasonal needs, such as boy scout camps.

The producer-handler states that the percentage of the milk distributed in the Great Basin market that is handled by producer-handlers has decreased over time, and that there are no indications that producer-handlers in the Great Basin market represent a threat of any disorderly marketing conditions. Further, he indicates that he knows of no undesirable marketing conditions or increase in number of producer-handlers in markets without limits on the amount of milk that producer-handlers are allowed to purchase.

Mr. Brown asserts that the prices for which the producer-handler sells milk are not the lowest or highest in the market, and do not adversely affect orderly marketing in the Great Basin marketing area. He states that paying the order's Class I price for raw milk would not provide producer-handlers any unusual opportunity to upset the market structure, and that prices received by producers whose milk is pooled under the order would not be negatively affected by the proposed suspension.

Finally, Mr. Brown cites the Regulatory Flexibility Act (5 U.S.C. 601-612) to argue that the requested suspension would represent a very positive action on behalf of small entities affected by the provisions of the Great Basin milk order.

#### List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1139 continues to read as follows:

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

Signed at Washington, DC, on June 13, 1989.

J. Patrick Boyle,  
Administrator.

[FR Doc. 89-14401 Filed 6-16-89; 8:45 am]  
BILLING CODE 3410-02-M

#### Food Safety and Inspection Service

##### 9 CFR Part 318

[Docket No. 88-025E]

RIN 0583-AA49

#### Additional Methods for Destroying Trichinae

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 20, 1989 (54 FR 15946), the Food Safety and Inspection Service (FSIS) published a proposed rule

to amend the Federal meat inspection regulations by amending two present trichinae destruction methods, combining two present controlled temperature drying tables, rescinding an approved trichina destruction method, and providing a new trichina destruction method for hams and pork shoulders. In addition FSIS proposed to ease drying requirements for oval sausages.

The comment period ends on June 19, 1989. FSIS has received requests to extend the comment period for an additional 60 days. FSIS is granting these requests and extending the comment period for an additional 60 days.

**DATES:** Comments must be received on or before August 18, 1989.

**ADDRESSES:** Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Dennis, Director, Processed Products Inspection Division, Technical Services, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

**SUPPLEMENTARY INFORMATION:** On April 20, 1989 (54 FR 15946), FSIS published a proposed rule to amend the Federal meat inspection regulations (9 CFR 318.10) by amending trichina destruction Method No. 3 for hams and pork shoulders to allow more variety in the production of country hams, including the use of ambient temperature drying. The proposed change would also combine two present controlled temperature drying tables. Further, FSIS proposed to amend trichina destruction Method No. 1 for hams and pork shoulders to allow establishments to use a drying time and temperature combination prescribed in the controlled temperature drying table in proposed Method No. 3. In addition, FSIS proposed to rescind one of the approved trichina destruction methods (Method No. 2) because establishments no longer use it. FSIS also proposed a new specific trichina destruction method for hams and pork shoulders (Method No. 4) which would permit establishments to substitute potassium chloride for salt in the curing mixture based on data substantiating that specific process. Finally, FSIS also proposed to ease the drying requirements for oval sausages found in Table 3a based on the application of basic physical principles and on data submitted by a manufacturer.

FSIS has received requests to extend the comment period so that additional

information can be gathered and submitted to FSIS. FSIS is interested in receiving additional information and is, therefore, extending the comment period for an additional 60 days.

Done at Washington, DC, on June 15, 1989.  
Lester M. Crawford,  
Administrator Food Safety and Inspection Service.

[FR Doc. 89-14544 Filed 6-16-89; 8:45 am]  
BILLING CODE 3410-DM-M

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

##### 14 CFR Part 71

[Airspace Docket No. 89-ASW-05]

#### Proposed Removal of Control Zone: Corpus Christi NALF Cabaniss Field, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to remove the control zone located at Corpus Christi Navy Auxiliary Landing Field (NALF) Cabaniss Field, TX. The FAA has been informed by the Department of the Navy that all standard instrument approach procedures (SIAPs) to NALF Cabaniss Field have been canceled, thus negating the need for a control zone. The intended effect of this proposal is to release that controlled airspace no longer required due to the cancellation of the SIAPs. Coincident with this proposal would be the changing of the airport status from instrument flight rules (IFR) to visual flight rules (VFR).

**DATES:** Comments must be received on or before July 31, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89-ASW-05, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

**SUPPLEMENTARY INFORMATION****Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-05." 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 Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, 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 Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. 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 the Federal Aviation Regulations (14 CFR Part 71) by removing the control zone located at Corpus Christi NALF Cabaniss Field, TX. The FAA has been informed by the Department of the Navy that all SIAPs serving NALF Cabaniss Field have been canceled, thus negating the need for a

control zone and making this proposal necessary. Additionally, both current and future plans require NALF Cabaniss Field to be utilized strictly as a VFR landing field for military aircraft. The intended effect of this proposal is to release that controlled airspace no longer required due to the cancellation of all SIAPs serving NALF Cabaniss Field. Coincident with this proposal would be the changing of the status of NALF Cabaniss Field from IFR to VFR. 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 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 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 FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

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

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

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

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows: Corpus Christi NALF Cabaniss Field, TX [Remove]

Issued in Fort Worth, TX, on June 5, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-14448 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

[Airspace Docket No. 89-AWP-15]

**Proposed Revision of Ukiah, CA, Transition Areas**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise transition areas at Ukiah, CA. This proposed action will provide controlled airspace for the execution of instrument approach procedures to Ukiah Municipal Airport, Ukiah, CA.

**DATES:** Comments must be received on or before August 11, 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-15, 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:**

Jon L. Semanek, 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) 297-0433.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit

with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWP-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The 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, 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 § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise transition areas at Ukiah, CA. This proposed action will provide controlled airspace for the execution of instrument approach procedures to Ukiah Municipal Airport, Ukiah, CA. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Aviation safety, Transition areas.

#### The Proposed Amendment

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

#### PART 71—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. 1343(a), 1345(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, Jan. 12, 1983); 14 CFR 11.69.

#### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

#### Ukiah, CA [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Ukiah Municipal Airport (lat. 39°07'34"N., long. 123°11'59"W.); and within 2.5 miles each side of the Ukiah localizer course extending from the 5-mile radius area to 26 miles north of Runway 15 threshold; that airspace extending upward from 1,200 feet above the surface within a 20-mile radius of the Mendocino, CA, VORTAC bounded on the E by the W edge of V-25, that airspace S of Ukiah bounded on the E by the W edge of V-25, on the S by lat. 38°43'30"N., on the W by long. 123°23'15"W., and that airspace between the 20- and 24-mile arcs of the Red Bluff, CA, VORTAC bounded on the NW by the NW edge of V-199 and on the SE by the SE edge of V-25; that airspace extending upward from 7,500 feet MSL between the 24- and 45-mile arcs of the Red Bluff, CA, VORTAC bounded on the NW by the NW edge of V-199 and on the SE by the SE edge of V-25; that airspace extending upward from 8,500 feet MSL bounded on the NE by a 45-mile arc of the Red Bluff VORTAC, on the SE by the SE edge of V-25, on the S and SW by the N edge of V-200 and a 20-mile arc of the Mendocino VORTAC, and on the NW by the NW edge of V-199; that airspace extending upward from 9,500 feet MSL bounded on the SE by the NW edge of V-199, on the W by the E edge of V-27, and on the N by a line 9 miles S of and parallel to the Red Bluff VORTAC 291° and Fortuna VORTAC 110° radials, excluding the airspace bounded by a line from lat. 39°32'00"N., long. 123°27'00"W., to lat. 39°32'00"N., long. 123°11'30"W., to lat. 39°21'30"N., long. 123°04'45"W., to lat. 39°18'45"N., long. 123°07'00"W., then via the

20 mile radius of the Mendocino, CA, VORTAC to lat. 39°20'30"N., long. 123°20'15"W., to lat. 39°32'00"N., long. 123°27'00"W. This 1,200 foot control area excludes the Ukiah Airport 700 foot transition area extension. That airspace extending upward from 5,300 feet MSL bounded on the E by the SW edge of V-27 and on the W by the W/SW edge of V-494.

Issued in Los Angeles, California, on June 2, 1989.

Jacqueline L. Smith,  
Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89-14447 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 89-ASO-26]

#### Proposed Amendment to Transition Area, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Orlando, FL, transition area by adding an arrival area extension northeast of the Orlando Executive Airport. This action is necessary to provide airspace protection for Instrument Flight Rules (IFR) aircraft executing the Instrument Landing System (ILS) Runway 25 Localizer approach. This procedure is being modified in order to accommodate a new ILS Standard Instrument Approach Procedure at Orlando International Airport.

**DATES:** Comments must be received on or before: July 21, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-26, P.O. Box 20636, Atlanta, Georgia 30320.

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

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

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-26." 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 Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, 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, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. 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 § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Orlando, FL, transition area. This action would add an arrival area extension northeast of the Orlando Executive Airport to provide airspace protection for aircraft executing the ILS Runway 25 localizer approach. Section 71.181 of Part 71 of

the Federal Aviation Regulations was republished in FAA 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 71

Aviation safety, Transition areas.

#### The Proposed Amendment

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

#### PART 71—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; E.O. 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, Jan. 12, 1983); 14 CFR 11.69.

#### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

#### Orlando, FL [Amended]

Following the phrase in the existing description which states, "... \* \* 14 miles northwest of the VORTAC;" add the following: "within five miles each side of the ILS localizer northeast course extending from the 8.5-mile radius area to 10 miles northeast of the airport;".

Issued in East Point, Georgia, on June 5, 1989.

Don Cass,

Acting Manager, Air Traffic Division,  
Southern Region.

[FR Doc. 89-14446 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-13-M

#### DEPARTMENT OF LABOR

#### Occupational Safety and Health Administration

#### 29 CFR Parts 1910 and 1926

[Docket No. H040]

RIN 1218-AA58

#### Occupational Exposure to 4,4'-Methylenedianiline (MDA)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule.

**SUMMARY:** On May 12, 1989, OSHA published a proposed rule on MDA (54 FR 20672). Among other things, the notice invited public comment and hearing requests to be postmarked no later than June 26, 1989—a date 45 days after the publication date.

Simultaneously with this release, OSHA issued a press release which indicated that this filing date was July 11, 1989—a date 60 days after the publication date. The news services used the press release as their source of information and indicated a filing date of July 11, 1989. In order to promote greater public participation in this rulemaking and avoid any confusion that might otherwise ensue, OSHA hereby extends the public participation date 15 days to July 11, 1989.

**DATES:** Comments and requests for a hearing concerning the proposed standard must be postmarked on or before July 11, 1989.

**ADDRESSES:** Comments are to be submitted to the Docket Officer, Docket No. H040, Occupational Safety and Health Administration, Room N2634, 200 Constitution Avenue, NW., Washington, DC 20210. Requests for a hearing are to be submitted to Mr. Tom Hall, OSHA, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, Director, Office of Public Affairs, OSHA, Rm. N-3641, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523-8151.

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 12th day of June 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 89-14423 Filed 6-16-89; 8:45 am]

BILLING CODE 4510-26-M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 925

## Missouri Permanent Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment:

**SUMMARY:** OSMRE is announcing receipt of a proposed amendment to the Missouri permanent regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to prime farmland, areas unsuitable, geology, operations plans, reclamation plans, permit conditions, fish and wildlife resource information, subsidence control, and informal assessment conferences. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and 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., c.d.t. July 19, 1989. If requested, a public hearing on the proposed amendments will be held on July 14, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t. on July 5, 1989.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below.

Copies of the Missouri program, the proposed amendment, 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. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas

City, MO 64106, Telephone: (816) 374-6405.

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

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751-4041.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. Kovacic, Director, Kansas City Field Office (816) 374-6405.

**SUPPLEMENTARY INFORMATION:****I. Background on the Missouri Program**

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, *Federal Register* (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

**II. Proposed Amendment**

By letter dated June 5, 1989, (Administrative Record No. MO-436) Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment in response to a June 11, 1986, letter from OSMRE in accordance with 30 CFR Part 732 requiring certain provisions of the State program to be updated for consistency with the Federal regulations through July 1, 1983, to satisfy deficiencies noted in a July 18, 1988, issue letter from OSMRE, and to satisfy deficiencies noted in a November 29, 1988, issue letter from OSMRE.

The regulations that Missouri proposes to amend are: 10 CSR 40-2.110(1)(B)2. and 3, and 40-6.060(4)(A) 2. and 3, Interim and Permanent Program Prime Farmland Permit Requirements; 10 CSR 40-5.010(2)(C) Areas Where Mining Is Prohibited or Limited; 10 CSR 40-6.040 (5)(A) and (5)(B)1, Geology Description; 10 CSR 40-6.050, (5)(C) and 40-6.120(H)(C), Surface and Underground Operations Plan—Maps and Plans; 10 CSR 40-6.050(9) (A-E) and 40-6.120(5) (A-E), Surface and Underground Reclamation Plan—Protection of Hydrologic Balance; 10 CSR 40-6.070(12)(D), Conditions on Permits; 10 CSR 40-6.110(11) (A) and (B), Underground Fish and Wildlife Resource Information; 10 CSR 40-

6.120(2)(B)3, Underground Operations Plan—General Requirements; 10 CSR 40-6.120(11) (A)1 and (E), Underground Subsidence Control Plan; and 10 CSR 40-8.040(8)(K) Procedures for Informal Assessment Conferences.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

*Written Comments*

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

*Public Hearing*

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., c.d.t. July 5, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify 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 having been heard. Persons in the audience who have been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

*Public Meeting*

If only one person requests an opportunity to testify 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 amendment may request a meeting 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 listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

#### List of Subjects in 30 CFR Part 925

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

Date: June 9, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-14437 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

RIN 2900-AE03

#### Veterans Education; Implementation of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 and New GI Bill Continuation Act of 1987

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed regulations.

**SUMMARY:** These rules would implement the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 and the New GI Bill Continuation Act of 1987. The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 contains many provisions which affect the administration of the new educational assistance program for veterans and servicemembers. These include provision for apprenticeship and other on-job training and correspondence training in this program; minor changes to the criteria which must be met in order to establish eligibility for the program; a requirement that certain veterans be counseled before choosing a program of education; and a change concerning nonduplication of Federal programs. The New GI Bill Continuation Act of 1987 makes this program permanent, and changes its name to the Montgomery GI Bill.

**DATES:** Comments must be received on or before July 19, 1989. Comments will be available for public inspection until July 31, 1989. It is proposed that the effective dates of the amended regulations coincide with the effective dates of the laws upon which they are based, except for § 21.7152 which is proposed to be effective 30 days after

final publication in the Federal Register. However, it is proposed to make the amendments to §§ 21.7000(a), 21.7040(a), 21.7042(a)(1), 21.7042(b)(1), 21.7042(d)(1), 21.7042(e)(1), and 21.7044(c)(1) retroactively effective on June 1, 1987, the effective date of the New GI Bill Continuation Act. It is proposed to make the amendments to all other sections retroactively effective on October 28, 1986, the effective date of the relevant sections of the Veterans' Benefits Improvement and Health-Care Authorization Act.

**ADDRESSES:** Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until July 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Alan Zoekler, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233-2668.

**SUPPLEMENTARY INFORMATION:** Several regulations are amended in order to implement provisions of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 (Pub. L. 99-576), and the New GI Bill Continuation Act of 1987 (Pub. L. 100-48). These provisions permit apprenticeship and on-job training and correspondence training in the Montgomery GI Bill. The provisions also prohibit receipt of benefits under two or more of the education programs administered by VA. This will result in a sharp reduction in benefits to a few veterans.

VA finds that good cause exists for making the amendments to §§ 21.7000(a), 21.7040(a), 21.7042(a)(1), 21.7042(b)(1), 21.7042(d)(1), 21.7042(e)(1), and 21.7044(c)(1), like the law which they implement, retroactively effective on June 1, 1987. Except for § 21.7152, VA finds that good cause exists for making the remainder of these regulations, like the sections of the law they implement, retroactively effective on October 28, 1986. To achieve the maximum benefit of the legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran or servicemember who is entitled by law to

it, or in the granting of a benefit to a veteran or servicemember who is not entitled to it.

VA has determined that these proposed regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

A Catalog of Federal Domestic Assistance number has not been assigned for the program affected by these regulations.

#### List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 28, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

#### PART 21—[AMENDED]

1. In § 21.7000, paragraphs (b) (2) and (3) and the authority citation are revised and (b) (4), (5), and (6) are added to read as follows:

#### § 21.7000 Establishment of educational assistance program.

\* \* \* \* \*

(b) \* \* \*

(2) To extend the benefits of a higher education to qualifying men and women

who might not otherwise be able to afford such an education;

(3) To provide for vocational readjustment and to restore lost educational opportunities to those servicemen and women who served on active duty after June 30, 1985.

(4) To promote and assist the All-Volunteer Force program and the Total Force Concept of the Armed Forces by establishing a new program of educational assistance based upon service on active duty or a combination of service on active duty and in the Selected Reserve (including the National Guard) to aid in the recruitment and retention of highly qualified personnel for both the active and reserve components of the Armed Forces;

(5) To give special emphasis to providing educational assistance benefits to aid in the retention of personnel in the Armed Forces; and

(6) To enhance the nation's competitiveness through the development of a more highly educated and productive work force.

(Authority: 38 U.S.C. 1401; Pub. L. 98-525, Pub. L. 100-48)

2. In § 21.7020, paragraphs (b)(2) and (b)(23) and their authority citations are revised, paragraph (b)(25)(i) is revised, and paragraphs (b)(35) through (37) are added to read as follows:

§ 21.7020 Definitions.

(b) \* \* \*

(2) *Attendance.* The term "attendance" means the presence of a veteran or servicemember—

(i) In the class where the approved course is being taught in which he or she is enrolled, or

(ii) At a training establishment, or

(iii) Any other place of instruction, training or study designated by the educational institution or training establishment where the veteran or servicemember is enrolled and is pursuing a program of education.

(Authority: 38 U.S.C. 1434, 1780(g))

(23) *Program of education.* A program of education—

(i) Is any unit course or subject or combination of courses or subjects which is pursued by a veteran or servicemember at an educational institution, and which is required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636; or

(ii) Is a combination of subjects or unit courses pursued at an educational institution. The combination generally is accepted as necessary to meet

requirements for a predetermined educational, professional or vocational objective. It may consist of subjects or courses which fulfill requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field; and

(iii) Includes an approved full-time program of apprenticeship or of other on-job training.

(Authority: 38 U.S.C. 1402(3), 1652(b); Pub. L. 98-525, Pub. L. 99-576)

(25) *Pursuit.* (i) The term "pursuit" means to work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institutional policy and regulations, and applicable criteria of Title 38, United States Code; must be necessary to reach the program's objective; and must be accomplished through—

(A) Resident courses (including teacher training courses and similar courses which VA considers to be resident training),

(B) Independent study courses,

(C) Correspondence courses,

(D) An apprenticeship or other on-job training program,

(E) A graduate program of research in absentia, or

(F) Medical-dental internships and residencies, nursing courses and other medical-dental specialty courses.

(35) *Established charge.* The term "established charge" means the lesser of—

(i) The charge for the correspondence course or courses determined on the basis of the lowest extended time payment plan offered by the educational institution and approved by the appropriate State approving agency, or

(ii) The actual cost to the servicemember or veteran.

(Authority: 38 U.S.C. 1434, 1786(a)(1))

(36) *Date of affirmance.* The term "date of affirmance" means the date (after the expiration of ten days after a veteran or servicemember signs an enrollment agreement for a correspondence course), on which the veteran or servicemember signs and submits to VA a written agreement affirming the enrollment agreement.

(Authority: 38 U.S.C. 1434, 1786)

(37) *Training establishment.* The term "training establishment" means any establishment providing apprentice or other on-job training, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency or any State board of vocational

education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal Government authorized to supervise such training.

(Authority: 38 U.S.C. 1434, 1787)

3. In § 21.7040, paragraph (a) is revised to read as follows:

§ 21.7040 Eligibility for basic educational assistance.

(a) Some individuals who first become members of the Armed Forces or who first enter on active duty as a member of the Armed Forces after June 30, 1985, and

4. In § 21.7042, paragraphs (a)(1) introductory text, (a)(5)(iii) and its authority citation, (b)(1) introductory text, (c) and its authority citation, (d)(1)(i), and (e)(1) are revised to read as follows:

§ 21.7042 Basic eligibility requirements.

(a) \* \* \*

(1) The individual must after June 30, 1985, either—

(5) \* \* \*

(iii) For convenience of the Government—

(A) After completing at least 20 continuous months of active duty if his or her initial obligated period of active duty is less than three years, or

(B) After completing 30 continuous months of active duty if his or her initial obligated period of active duty is at least three years.

(Authority: 38 U.S.C. 1411; Pub. L. 98-525, Pub. L. 99-576)

(b) \* \* \*

(1) The individual must, after June 30, 1985, either—

(c) *Dual eligibility.* (1) An individual who has established eligibility under paragraph (a) of this section through serving at least two years of continuous active duty of an initial obligated period of active duty of less than three years, as provided in paragraph (a)(2) of this section, may attempt to establish eligibility under paragraph (b) of this section through service in the Selected Reserve. If this veteran fails to establish eligibility under paragraph (b) of this section, he or she will retain eligibility established under paragraph (a) of this section.

(2) An individual must elect whether or not he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. Chapter 30 or under 10 U.S.C. Chapter 106 when—

(i) The individual is—

(A) A veteran who has established eligibility for basic educational assistance through meeting the provisions of paragraph (b) of this section, and

(B) Also a reservist who has established eligibility for benefits under 10 U.S.C. Chapter 106 through meeting the requirements of § 21.7540 of this part, or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance provided under 38 U.S.C. Chapter 30 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504 or 505.

(3) A veteran may revoke his or her election provided he or she has not negotiated a check for benefits under either 38 U.S.C. Chapter 30 or 10 U.S.C. Chapter 106. Once the veteran has negotiated a check under either chapter, the election is irrevocable.

(Authority: 38 U.S.C. 1433(c), 10 U.S.C. 2132; Pub. L. 98-525, Pub. L. 99-576)

(d) \* \* \*

(1) \* \* \*

(i) After June 30, 1985, either—

(e) \* \* \*

(1) An individual who, after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces, may elect not to receive educational assistance under 38 U.S.C. Chapter 30. This election must be made at the time the individual initially enters on active duty as a member of the Armed Forces. An individual who makes such an election is not eligible for educational assistance under 38 U.S.C. Chapter 30.

5. In § 21.7044, paragraph (a)(5)(vi) is revised, paragraph (a)(6) is added, the authority citation at the end of paragraph (a) is revised, and paragraph (c)(1)(i) introductory text is revised to read as follows:

**§ 21.7044 Persons with 38 U.S.C. Chapter 34 eligibility.**

(a) \* \* \*

(5) \* \* \*

(vi) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the

Secretary concerned as honorable service.

(6) The individual must have been on active duty on October 19, 1984, and without a break in service since October 19, 1984.

(Authority: 38 U.S.C. 1411; Pub. L. 98-525, Pub. L. 99-145, Pub. L. 99-576)

(c) \* \* \*

(1) \* \* \*

(i) After June 30, 1985, either—

6. In § 21.7050, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) respectively, the introductory text of paragraph (a) and its authority citation are revised and new paragraph (b) is added to read as follows:

**§ 21.7050 Ending dates of eligibility.**

(a) *Ten-year time limitation.* Except as provided in paragraph (b) of this section and in § 21.7051 of this part VA will not provide basic educational assistance or supplemental educational assistance to a veteran or servicemember after the later of the following:

(Authority: 38 U.S.C. 1431 (a) and (e); Pub. L. 98-525, Pub. L. 100-323)

(b) *Reduction of ten-year eligibility period.* A veteran who had eligibility for educational assistance under 38 U.S.C. Chapter 34 and who is eligible for educational assistance under 38 U.S.C. Chapter 30 as provided in § 21.7044 of this part shall have his or her ten-year period of eligibility reduced by the number of days he or she was not on active duty during the period beginning on January 1, 1977, and ending on October 18, 1984.

(Authority: 38 U.S.C. 1431(e); Pub. L. 100-323)

7. In § 21.7076, the introductory text and the authority citation for paragraph (a) are revised, paragraph (b)(1) introductory text is revised, and paragraphs (b)(3) through (b)(6) are added and the authority citation at the end of paragraph (b) is revised to read as follows:

**§ 21.7076 Entitlement charges.**

(a) *Overview.* VA will make charges against entitlement as stated in this section. Charges will be made against the entitlement the veteran or servicemember has to educational assistance under 38 U.S.C. Chapter 30. After December 31, 1989, there will be a charge (for record purposes only) against the entitlement, if any, which he or she may have under 38 U.S.C. Chapter 34. The charges against entitlement under 38 U.S.C. Chapter 34 will not count against the 48 months of

total entitlement under both 38 U.S.C. Chapters 30 and 34 to which the veteran or servicemember may be entitled. (See § 21.4020(a) of this part.) Except for those pursuing correspondence training or apprenticeship or other on-job training, charges are based upon the principle that a veteran or servicemember who trains full time for one day should be charged one day of entitlement. The provisions of this section apply to—

(Authority: 38 U.S.C. 1413; Pub. L. 98-525, Pub. L. 99-576)

(b) *Determining entitlement charge.*

(1) Except for those pursuing correspondence training or apprenticeship or other on-job training VA will make a charge against entitlement—

(3) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training VA will make a charge against chapter 30 entitlement of—

(i) .75 of a month in the case of payments made during the first six months of the veteran's pursuit of the program of apprenticeship or other on-job training,

(ii) .55 of a month in the case of payments made during the second six months of the veteran's pursuit of the program of apprenticeship or other on-job training, and

(iii) .35 of a month in the case of payments made following the first twelve months of the veteran's pursuit of apprenticeship or other on-job training.

(4) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training VA will make a record purpose charge against chapter 34 entitlement, if any, of one month for each month of benefits paid to him or her.

(5) When a veteran or servicemember is pursuing a program of education by correspondence, VA will make a charge against entitlement for each payment made to him or her. The charge—

(i) Will be made in months and decimal fractions of a month, and

(ii) Will be determined by dividing the amount of the payment by an amount equal to the rate of educational assistance otherwise applicable to him or her for full-time training (disregarding in the case of a servicemember the cost of course comparison).

(6) When a veteran or servicemember is pursuing a program of education

partly in residence and partly by correspondence, VA will make a charge against entitlement—

(i) For the residence portion of the program as provided in paragraphs (b) (1) and (2) of this section, and

(ii) For the correspondence portion of the program as provided in paragraph (b)(5) of this section.

(Authority: 38 U.S.C. 1432(c), 1434(c); Pub. L. 99-576)

8. In § 21.7100, paragraphs (b) and (d) and their authority citations are revised to read as follows:

§ 21.7100 Counseling.

(b) *Required counseling.* (1) In any case in which VA has rated the veteran as being incompetent, the veteran must be counseled before selecting a program of education or training. The requirement that counseling be provided is met when—

(i) The veteran has had one or more personal interviews with the counselor;

(ii) The counselor has jointly developed with the veteran recommendations for selecting a program; and

(iii) These recommendations have been reviewed with the veteran.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(3) VA will take no further action on a veteran's application for assistance under 38 U.S.C. Chapter 30 when he or she—

(i) Fails to report;

(ii) Fails to cooperate in the counseling process; or

(iii) Does not complete counseling to the extent required under paragraph

(b)(1) of this section.

(4) Counseling is not required for any other individual eligible for educational assistance established under 38 U.S.C. Chapter 30.

(Authority: 38 U.S.C. 1432, 1663; Pub. L. 99-525, Pub. L. 99-576)

(d) *Provision of counseling.* VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (c) of this section upon request of the individual. In addition, VA shall provide counseling as needed for the purposes identified in paragraph (b) of this section following the veteran's request for counseling, the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. VA shall take appropriate steps (including

individual notification where feasible) to acquaint all participants with the availability and advantages of counseling services.

(Authority: 38 U.S.C. 1434, 1663; Pub. L. 99-525, Pub. L. 99-576)

9. Section 21.7103 is revised and a cross-reference is added to read as follows:

§ 21.7103 Travel expenses.

(a) *Travel for veterans and servicemembers.* (1) Except as provided in paragraph (a)(2) of this section, VA shall determine and pay the necessary cost of travel to and from the place of counseling for individuals who are required to receive counseling if—

(i) The VA determines that the individual is unable to defray the cost based upon his or her annual declaration and certification; or

(ii) The individual has a compensable service-connected disability.

(2) VA shall not pay for the travel expenses for a veteran who is not residing in a State.

(Authority: 38 U.S.C. 111)

(b) *Travel for attendants.* (1) VA will authorize payment of travel expenses for an attendant while the individual is traveling when—

(i) The individual, because of a severe disability, requires the services of an attendant when traveling, and

(ii) VA is paying the necessary cost of the individual's travel on the basis of the criteria stated in paragraph (a) of this section.

(2) VA will not pay the attendant a fee for travel expenses if he or she is a relative as defined in § 21.374 of this part.

(Authority: 38 U.S.C. 111)

(c) *Payment of travel expenses prohibited for most veterans.* VA shall not pay for any costs of travel to and from the place of counseling for anyone who requests counseling under 38 U.S.C. Chapter 30.

(Authority: 38 U.S.C. 111)

Cross-Reference: § 21.374, Authorization for travel of attendants.

10. In § 21.7112, the introductory text of paragraph (a) and the authority citation at the end of paragraph (a) are revised to read as follows:

§ 21.7112 Programs of education combining two or more types of courses

(a) *Concurrent enrollment.* When a veteran or servicemember cannot successfully schedule his or her complete program at one educational institution, VA may approve a program

of concurrent enrollment. When requesting such a program the veteran, or servicemember must show that his or her complete program of education is not available at the educational institution in which he or she will pursue the major portion of his or her program (the primary educational institution), or that it cannot be scheduled successfully within the period in which he or she plans to complete his or her program. When the standards for measurement of the courses pursued concurrently in the two educational institutions are different, the concurrent enrollment shall be measured by converting the measurement of courses being pursued at the second educational institution under the standard applicable to such institution to its equivalent measurement under the standard required for full-time courses applicable to the primary educational institution. For a complete discussion of measurement of concurrent enrollments see § 21.7172 of this part.

(Authority: 38 U.S.C. 1434, 1788)

11. In § 21.7122, paragraph (e)(6) is removed and paragraph (e)(7) is redesignated as new paragraph (e)(6); paragraph (e)(5) and the authority citation for paragraph (e) are revised to read as follows:

§ 21.7122 Courses precluded.

(e) \* \* \*

(5) A course from which the veteran or servicemember withdrew without mitigating circumstances, or

(Authority: 38 U.S.C. 1402(3), 1434, 1772(a), 1780(a))

12. In § 21.7131, paragraph (c) and its authority citation are revised to read as follows:

§ 21.7131 Commencing dates.

(c) *Certification by educational institution or training establishment—course does not lead to a standard college degree.* (1) When a veteran or servicemember enrolls in a course which does not lead to a standard college degree and which is offered in residence, the commencing date of the award of educational assistance shall be the first date of the veteran's or servicemember's class attendance.

(2) When a veteran or servicemember enrolls in a course which is offered by correspondence, the commencing date of the award of educational assistance shall be the later of—

(i) The date the first lesson was sent, or

(ii) The date of affirmance.

(3) When a veteran enrolls in a program of apprenticeship or other on-job training, the commencing date of the award of educational assistance shall be the first date of employment in the training position.

(Authority: 38 U.S.C. 1414, 1423; Pub. L. 98-525, Pub. L. 99-576)

13. In § 21.7135, paragraph (e)(2)(ii) is revised, paragraphs (e) (3) and (4) are added, and the authority citation for paragraph (e) is revised to read as follows:

**§ 21.7135 Discontinuance dates.**

(e) \* \* \*

(2) \* \* \*

(ii) Independent study: official date of change in status under the practices of the educational institution.

(3) When a veteran or servicemember withdraws from a correspondence course, VA will terminate educational assistance effective the date the last lesson is serviced.

(4) When a veteran or servicemember withdraws from an apprenticeship or other on-job training, VA will terminate educational assistance effective the date of last training.

(Authority: 38 U.S.C. 1434, 1780(a); Pub. L. 98-525, Pub. L. 99-576)

14. Section 21.7136 is revised to read as follows:

**§ 21.7136 Rates of payment of basic educational assistance.**

(a) *Rates.* (1) Except as otherwise provided in this section and § 21.7137 of this part, the monthly rate of basic educational assistance payable to a veteran is the rate stated in this table. The rates in this table also apply to a veteran who formerly was eligible under 38 U.S.C. Chapter 34, and who has received a record-purpose charge against his or her entitlement under that chapter equal to the entitlement he or she had remaining on December 31, 1989.

Training	Monthly rate
Full time.....	\$300
¾ time.....	225
½ time.....	150
Less than ½ but more than:	
¼ time.....	150 See § 21.7136(d)
¼ time or less.....	75 See § 21.7136(d)

(Authority: 38 U.S.C 1415(c); Pub. L. 98-525)

(2) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran who is pursuing an apprenticeship or other on-job training is the rate stated in this table. The rates in this table also apply to a veteran pursuing such training who formerly was eligible under 38 U.S.C. Chapter 34, and who has received a record-purpose charge against his or her entitlement under that chapter equal to the entitlement he or she had remaining on December 31, 1989.

Training period	Monthly rate
First 6 months of pursuit of program.....	\$225.00
Second 6 months of pursuit of program.....	165.00
Remaining pursuit of program.....	105.00

(Authority: 38 U.S.C. 1432(c); Pub. L. 99-576)

(b) *Rates for veterans whose initial obligated period of active duty is less than three years.* (1) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran whose initial obligated period of active duty is less than three years and who has not served and is not committed to serve in the Selected Reserve for a period of four years is the amount stated in this table.

Training	Monthly rate
Full time.....	\$250.00
¾ time.....	187.50
½ time.....	125.00
Less than ½ but more than:	
¼ time.....	125.00 See § 21.7136(d)
¼ time or less.....	62.50 See § 21.7136(d)

(Authority: 38 U.S.C 1415(c); Pub. L. 98-525)

(2) Except as otherwise provided in this section, the monthly rate of educational assistance payable to a veteran whose initial obligated period of active duty is less than three years and who has not served and is not committed to serve in the Selected Reserve for a period of four years, and who is pursuing an apprenticeship or other on-job training is the rate stated in this table.

Training period	Monthly rate
First 6 months of pursuit of program.....	\$187.5
Second 6 months of pursuit of program.....	137.50
Remaining pursuit of program.....	87.50

(Authority: 38 U.S.C. 1432(c); Pub. L. 99-576)

(c) *Increase in basic educational assistance rates ("kicker").* The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but—

(1) For individuals other than those pursuing an apprenticeship or other on-job training program, it may not exceed—

(i) \$400 per month for full-time training,

(ii) \$300 per month for three-quarter-time training,

(iii) \$200 per month for one-half-time training or for training which is less than one-half, but more than one-quarter-time, or

(iv) \$100 per month for one-quarter-time training or less.

(2) For individuals pursuing an apprenticeship or other on-job training it may not exceed—

(i) \$300 per month during the first six months of training,

(ii) \$220 per month during the second six months of training, and

(iii) \$140 per month during the remaining months of training.

(Authority: 38 U.S.C. 1415(c), 1432(c))

15. In § 21.7137, paragraphs (a), (b), and (d) and their authority citations are revised to read as follows:

**§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. Chapter 34.**

(a) *Minimum rates.* Effective January 1, 1990, VA will pay basic educational assistance at an increased rate to veterans who were eligible for educational assistance allowance under 38 U.S.C. Chapter 34. The veterans must establish eligibility for educational assistance under § 21.7044 of this part, and must still have remaining entitlement under 38 U.S.C. Chapter 34.

(1) Except as otherwise provided in this section, the monthly rate of basic educational assistance will be the rate taken from the following table.

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time.....	\$488.00	\$524.00	\$555.00	\$16.00
¾ time.....	366.50	393.00	416.50	12.00
½ time.....	244.00	262.00	277.50	8.50
Less than ½ but more than:				
¼ time....	244.00	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
¼ time or less.....	122.00	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> See § 21.7137(b).

(Authority: 38 U.S.C 1415(c); Pub. L. 98-525)

(2) For veterans pursuing an apprenticeship or other on-job training, the monthly rate of basic educational assistance will be the rate taken from the following table.

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional amount for additional dependents
1st 6 mos. of pursuit of program.....	\$327.75	\$340.13	\$351.00	\$5.25
2nd 6 mos. of pursuit of program.....	221.38	230.73	238.43	3.85
3rd 6 mos. of pursuit of program.....	128.80	134.93	139.65	2.45
Remaining pursuit of program.....	116.90	122.68	127.93	2.45

(Authority: 38 U.S.C. 1415(c), 1434, 1786(a)(2); Pub. L. 99-576)

(b) *Less than one-half-time training.* The monthly rate for a veteran who is pursuing a course on a less than one-half-time basis is the lesser of—

- (1) The monthly rate stated in paragraph (a)(1) of this section, or
- (2) The monthly rate of the cost of the course.

(Authority: 38 U.S.C. 1432; Pub. L. 98-525, Pub. L. 99-576)

(d) *Increase in basic educational assistance rates ("kicker").* The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a

critical shortage of personnel or for which it is difficult to recruit. The increase may not be applied to a servicemember whose monthly rate is determined by paragraph (c)(1) of this section, but it can serve to raise the ceiling on monthly rates stated in paragraphs (b)(1) and (c)(2) of this section. The amount of the increase is set by the Secretary concerned, but—

(1) For individuals other than those pursuing an apprenticeship or other on-job training program, it may not exceed—

- (i) \$400 per month for full-time training,
- (ii) \$300 per month for three-quarter-time training,
- (iii) \$200 per month for one-half-time training or for training which is less than one-half but more than one-quarter-time, or
- (iv) \$100 per month for one-quarter-time training or less.

(2) For individuals pursuing an apprenticeship or other on-job training it may not exceed—

- (i) \$300 per month for the first six months of training,
- (ii) \$220 per month for the second six months of training, and
- (iii) \$140 per month for the remaining months of training.

(Authority: 38 U.S.C. 1415, 1432)

16. In § 21.7138, paragraphs (a) and (b) and their authority citations and the heading for paragraph (c) are revised to read as follows:

**§ 21.7138 Rates of supplemental educational assistance.**

(a) *Rates of supplemental educational assistance for veterans.* (1) Except for a veteran pursuing an apprenticeship or other on-job training program, the rate of supplemental educational assistance payable to a veteran is the rate stated in this table.

Training	Monthly rate
Full time.....	\$300
¾ time.....	225
½ time.....	150
Less than ½ but more than:	
¼ time.....	150 See § 21.7138 (c)
¼ time or less.....	75 See § 21.7138 (c)

(Authority: 38 U.S.C 1415(c); Pub. L. 98-525)

(2) For a veteran pursuing apprenticeship or other on-job training the rate of supplemental educational assistance payable to a veteran is as provided in this table.

Training period	Monthly rate
First 6 months of pursuit of program.....	\$225.00
Second 6 months of pursuit of program.....	165.00
Remaining pursuit of program.....	105.00

(Authority: 38 U.S.C. 1415(c), 1432(c); Pub. L. 99-576)

(b) *Increase in supplemental educational assistance rates ("kicker").* The Secretary concerned may increase the amount of supplemental educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but—

(1) For an individual other than one pursuing an apprenticeship or other on-job training it may not exceed—

- (i) \$300 per month for full-time training,
- (ii) \$225 per month for three-quarter-time training,
- (iii) \$150 per month for one-half-time training and for training which is less than one-half-time, but more than one-quarter-time, or
- (iv) \$75 per month for one-quarter-time training or less.

(2) For an individual pursuing an apprenticeship or other on-job training it may not exceed

- (i) \$225 per month for the first six months of training,
- (ii) \$165 per month for the second six months of training, and
- (iii) \$105 per month for the remaining months of training.

(Authority: 38 U.S.C. 1422(b), 1432(c))

(c) *Rates of supplemental educational assistance for less than one-half-time training and for servicemembers.*

17. In § 21.7139, the introductory text for paragraph (a) and the authority citation for paragraph (a) are revised, and paragraphs (i) and (j) are added to read as follows:

**§ 21.7139 Conditions which result in reduced rates.**

(a) *Absences.* A veteran or servicemember enrolled in a course not leading to a standard college degree (other than one to which § 21.4270(a), footnote 6 applies) will have his or her educational assistance reduced for any day of absence which exceeds the maximum allowable absences permitted in this paragraph.

(Authority: 38 U.S.C. 1434, 1780; Pub. L. 99-576)

(i) *Payment for correspondence courses.* The amount of payment due a veteran or servicemember who is pursuing a correspondence course or the correspondence portion of a correspondence-residence course is 55 percent of the established charge which the educational institution requires nonveterans to pay for the lessons that the veteran or servicemember has had completed and serviced and for which payment is due.

(Authority: 38 U.S.C. 1434, 1786(a)(2))

(j) *Failure to work sufficient hours of apprenticeship and other on-job training.* (1) For any month in which an eligible veteran pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training the VA shall reduce the rates specified in §§ 21.7136(a)(2), 21.7136(b)(2) and 21.7137(b)(2) of this part proportionally. In this computation the VA shall round the number of hours worked to the nearest multiple of eight.

(2) For the purpose of this paragraph "hours worked" include only—

- (i) The training hours the veteran worked, and
- (ii) All hours of the veteran's related training which occurred during the standard workweek and for which the veteran received wages. (See § 21.4270(b), footnote 5 as to the requirements for full-time training.)

(Authority: 38 U.S.C. 1434, 1787(b)(3))

18. In § 21.7140, paragraph (b) is redesignated as paragraph (d); paragraph (c) is redesignated as paragraph (e); paragraph (a) is revised; new paragraphs (b), (c), and (f) are added to read as follows:

**§ 21.7140 Certifications and release of payments.**

(a) *Advance payments.* (1) VA shall make payments of educational assistance in advance when—

- (i) The veteran or servicemember has specifically requested such a payment;
- (ii) The educational institution at which the veteran or servicemember is accepted or enrolled has agreed to, and can satisfactorily carry out the provisions of 38 U.S.C. 1780(d)(4)(B) and (C) and (5) pertaining to receipt, delivery or return of checks and certifications of delivery and enrollment;
- (iii) The Director of the VA field facility of jurisdiction has not acted under paragraph (a)(4) of this section to prevent advance payments being made to the veteran's or servicemember's educational institution;

(iv) There is no evidence in the veteran's or servicemember's claim file showing that he or she is not eligible for an advance payment;

(v) The period for which the veteran or servicemember has requested a payment either is preceded by an interval of nonpayment for 30 days or more or is the beginning of a school year; and

(vi) The educational institution or the veteran has submitted the certification required by § 21.7151 of this part.

(2) The amount of advance payment is the educational assistance for the month or fraction thereof in which the term or course will begin plus the educational assistance for the following month.

(3) Advance payments will be mailed to the educational institution for delivery to the veteran or servicemember. The educational institution shall not deliver the advance payment check more than 30 days in advance of the first date of the period for which the advance payment is made.

(4) The Director of the VA field facility of jurisdiction may direct that advance payments not be made to individuals attending an educational institution if—

- (i) The educational institution demonstrates an inability to comply with the requirements of paragraph (a)(3) of this section, or
- (ii) The educational institution fails to provide adequately for the safekeeping of the advance payment checks before delivery to the veteran or servicemember or return to VA, or
- (iii) The Director determines, based on compelling evidence, that the educational institution has demonstrated its inability to discharge its responsibilities under the advance payment program.

(Authority: 38 U.S.C. 1434, 1780(d))

(b) *Lump-sum payments.* (1) A certification of enrollment from an educational institution will be sufficient to release payment of educational assistance to a veteran or servicemember for an entire quarter, semester or term no later than the last day of the month following the month in which VA received the certification when the veteran or servicemember is training on a less than half-time basis.

(2) VA will make lump sum payments of educational assistance when the veteran's or servicemember's enrollment or attendance is first certified after he or she completes his or her enrollment period.

(Authority: 38 U.S.C. 1434, 1780(f))

(c) *Other payments.* An individual must be pursuing a program of

education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

(1) VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship or other on-job training or a correspondence course, one who qualifies for an advance payment or one who qualifies for a lumpsum payment) only after—

(i) The educational institution has certified his or her enrollment as provided in § 21.7152 of this part;

(ii) VA has received from the individual a verification of the enrollment; and

(iii) In the case of a veteran or servicemember pursuing a course not leading to a standard college degree, other than one to which § 21.4270(a), footnote 6 applies, a report from the veteran or servicemember of each day of absence from scheduled attendance. The report will be endorsed by the educational institution. If the veteran is enrolled concurrently in more than one educational institution, the primary educational institution will endorse the report. For a discussion of each of these certifications, see §§ 21.7152 and 21.7154 of this part.

(2) VA will pay educational assistance to a veteran pursuing a program of apprenticeship or other on-job training only after—

(i) The training establishment has certified his or her enrollment in the training program as provided in § 21.7152 of this part; and

(ii) VA has received from the veteran and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to a veteran or

servicemember who is pursuing a correspondence course only after—

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the veteran or servicemember a certification as to the number of lessons completed and serviced by the educational institution; and

(iii) VA has received from the educational institution a certification or an endorsement on the veteran's or servicemember's certificate, as to the number of lessons completed by the veteran or servicemember and serviced by the educational institution.

(Authority: 38 U.S.C. 1434, 1780(b))

(f) *Limitations on payments.* VA will not apportion educational assistance.

(Authority: 38 U.S.C. 1434, 1780)

19. In § 21.7142, paragraph (a) and its authority citation are revised to read as follows:

**§ 21.7142 Nonduplication of educational assistance.**

(a) *Payments of educational assistance shall not be duplicated.* An individual, entitled to educational assistance under 38 U.S.C. Chapter 34, who establishes entitlement under 38 U.S.C. Chapter 30, shall not be eligible to receive educational assistance under 38 U.S.C. Chapter 30 before January 1, 1990. An individual who is entitled to educational assistance under 38 U.S.C. Chapter 30 and any of the provisions of law listed in this paragraph must elect which benefit he or she will receive for the program of education he or she wishes to pursue. The provisions of law are:

- (1) 38 U.S.C. Chapter 31.
- (2) 38 U.S.C. Chapter 32,
- (3) 38 U.S.C. Chapter 35,
- (4) 10 U.S.C. Chapter 106,
- (5) 10 U.S.C. Chapter 107, and
- (6) The Hostage Relief Act of 1980, (Pub. L. 96-499 and 5 U.S.C. 5561 note).

(Authority: 38 U.S.C. 1433)

\* \* \* \* \*

20. Section 21.7145 is added to read as follows:

**§ 21.7145 Veteran-student services.**

(a) *Eligibility.* Veterans pursuing full-time programs of education or training under chapter 30 are eligible to receive a work-study allowance.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(b) *Selection criteria.* Whenever feasible VA will give priority in selection for this allowance to veterans with service-connected disabilities rated at 30 percent or more. The VA shall consider the following additional selection criteria:

- (1) Need of the veteran to augment his or her educational assistance allowance;
- (2) Availability to the veteran of transportation to the place where his or her services are to be performed;
- (3) Motivation of the veteran; and
- (4) Compatibility of the work assignment to the veteran's physical condition.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(c) *Utilization.* Veteran-student services may be utilized in connection with—

- (1) Outreach services programs as carried out under the supervision of a VA employee;
- (2) Preparation and processing of necessary papers and other documents

at educational institutions or regional offices or facilities of VA;

(3) Hospital and domiciliary care and medical treatment at VA facilities; and

(4) Any other appropriate activity of VA.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(d) *Rate of payment.* (1) In return for the veteran's agreement to perform services for VA totaling 250 hours during an enrollment period, VA will pay an allowance in an amount equal to the higher of—

- (i) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times 250, or
- (ii) \$625.

(2) VA will pay proportionately less to veterans who agree to perform a lesser number of hours of services.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(e) *Payment in advance.* VA will pay in advance an amount equal to 40 percent of the total amount payable under the contract.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(f) *Veteran reduces rate of training.* In the event the veteran ceases to be a full-time student before completing an agreement, the veteran, with the approval of the Director of the VA field facility, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the veteran ceases to be a full-time student.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(g) *Veteran terminates training.* (1) If the veteran terminates all training before completing an agreement, the Director of the VA field facility or designee—

- (i) May permit him or her to complete the portion of the agreement represented by the money VA has advanced the veteran for which he or she has performed no service, but
- (ii) Will not permit him or her to complete that portion of an agreement for which no advance has been made.

(2) The veteran must complete the portion of an agreement in the same or immediately following term, quarter or semester in which the veteran terminates training.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(h) *Indebtedness for unperformed service.* (1) If the veteran has received an advance for hours of unperformed service, and VA has evidence that he or

she does not intend to perform that service, the advance—

(i) Will be a debt due the United States, and

(ii) Will be subject to recovery the same as any other debt due the United States.

(2) The amount of indebtedness for each hour of unperformed service shall equal the hourly wage that formed the basis for the contract.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(i) *Survey.* VA will conduct an annual survey of its regional offices to determine the number of veterans whose services can be utilized effectively.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

21. Section 21.7151 is added to read as follows:

**§ 21.7151 Advance payment certifications.**

All certifications required by this paragraph shall be in a form and shall contain such information as specified by the Secretary.

(a) *Certification needed before an advance payment can be made.* In order for a veteran or service member to receive an advance payment of educational assistance, the application or other document must be signed by the veteran or the enrollment certification must be signed by an authorized official of the educational institution.

(Authority: 38 U.S.C. 1434, 1780(d))

(b) *Advance payments.* All verifications required by this paragraph shall be in a form and shall contain such information as specified by the Secretary.

(1) For each individual receiving an advance payment an educational institution must—

- (i) Verify enrollment for the individual; and
- (ii) Verify the delivery of the advance payment check to the individual.

(2) Once the educational institution has initially verified the enrollment of the individual, the individual, not the educational institution, must make subsequent verifications in order to release further payment for that enrollment as provided in § 21.7154(a) of this part.

(Authority: 38 U.S.C. 1434, 1780(d))

22. In § 21.7152, paragraph (a) and its authority citation are revised to read as follows:

**§ 21.7152 Certification of enrollment.**

(a) Except as provided in § 21.7151 of this part, the educational institution must certify the veteran's or servicemember's enrollment before he or she may receive educational assistance. This certification shall be in a form and shall contain such information as specified by the Secretary.

(Authority: 38 U.S.C. 1432, 1434, 1682(g), 1780, 1787)

23. Sections 21.7154 and 21.7156 are revised to read as follows:

**§ 21.7154 Pursuit and absences.**

As stated in § 21.7140(a) of this part except when an individual is pursuing a correspondence course an individual must submit a verification to VA each month of his or her enrollment during the period for which the individual is to be paid. This verification shall be in a form specified by the Secretary.

(a) *Requirements for all veterans and servicemembers.* (1) The monthly verification for all veterans and servicemembers will include a report on the following items when applicable:

- (i) Actual attendance,
- (ii) Continued enrollment in and pursuit of the course,
- (iii) The individual's unsatisfactory conduct or progress,
- (iv) Date of interruption or termination of training,
- (v) Changes in the number of credit hours or in the number of clock hours of attendance,
- (vi) Nonpunitive grades, and
- (vii) Any other changes or modifications in the course as certified at enrollment.

(2) The verification of enrollment must—

- (i) Contain the information required for release of payment,
- (ii) Be signed by the veteran or servicemember on or after the final date of the reporting period, and
- (iii) Clearly show the date on which it was signed.

(Authority: 38 U.S.C. 1434, 1784; Pub. L. 98-525, Pub. L. 99-576)

(b) *Additional requirements when the course does not lead to a standard college degree.* (1) The veteran or servicemember must certify attendance monthly by reporting each day of absence from scheduled attendance as defined in § 21.7139(a) of this part when—

- (i) The course in which he or she is enrolled does not lead to a standard college degree;
- (ii) The course does not qualify for measurement on a credit-hour basis as provided in § 21.4270(a), footnote 6.

(2) For the purposes of this certification the educational institution must—

(i) Convert partial days of absence to full days of absence as provided in § 21.7139(a) of this part.

(ii) Verify the full days of absence reported, and

(iii) Endorse the report.

(c) *Additional requirements for apprenticeships and other on-job training programs.* (1) When a veteran is pursuing an apprenticeship or other on-job training he or she must certify training monthly by reporting the number of hours worked.

(2) The information provided by the veteran must be verified by the training establishment.

(Authority: 38 U.S.C. 1434, 1780(a))

**§ 21.7156 Other required reports from educational institutions.**

Each veteran or servicemember must report without delay to the Department of Veterans Affairs any change in his or her hours of credit or attendance, any change in his or her pursuit and any interruption or termination of his or her attendance. Each educational institution must report without delay such information on the entrance, reentrance, change in hours of credit or attendance, pursuit, interruption and termination of attendance of each veteran or servicemember enrolled in an approved course as the Secretary may require and using a form specified by the Secretary.

(a) *Interruptions, terminations and changes in hours of credit or attendance.* When a veteran or servicemember interrupts or terminates his or her training for any reason, including unsatisfactory conduct or progress, or when he or she changes the number of hours of credit or attendance, the educational institution must report this fact to the VA.

(1) If the change in status or change in number of hours of credit or attendance occurs on a day other than one indicated by paragraph (a) (2) or (3) of this section, the educational institution will initiate a report of the change in time for VA to receive it within 30 days of the date on which the change occurs. If the veteran or servicemember is enrolled in a course which does not lead to a standard college degree and for which a monthly certification of attendance is required, the educational institution instead may report the change on the monthly certification of attendance for the month in which the change occurred.

(2) If the educational institution has certified the veteran's or servicemember's enrollment for more

than one term, quarter or semester and the veteran or servicemember interrupts his or her training at the end of a term, quarter or semester within the certified enrollment period, the educational institution shall report the change in status to VA in time for VA to receive the report within 30 days of the last officially scheduled registration date for the next term, quarter or semester. If the veteran or servicemember is enrolled in a course which does not lead to a standard college degree and for which a monthly certification of attendance is required, the educational institution instead may report the change on the monthly certification of attendance for the month in which the change occurred.

(3) If the change in status or change in the number of hours of credit or attendance occurs during the 30 days of a drop-add period, the educational institution must report the change in status or change in the number of hours of credit or attendance to VA in time for VA to receive the report within 30 days from the last date of the drop-add period or 60 days from the first day of the enrollment period, whichever occurs first.

(Authority: 38 U.S.C. 1434, 1784)

(b) *Nonpunitive grades.* (1) An educational institution may assign a nonpunitive grade for a course or subject in which the veteran or servicemember is enrolled even though the veteran or eligible person does not withdraw from the course or subject. When this occurs, the educational institution must report the assignment of the nonpunitive grade in a form prescribed by the Secretary in time for VA to receive it before the earlier of the following dates is reached:

- (i) Thirty days from the date on which the educational institution assigns the grade, or
- (ii) Sixty days from the last day of the enrollment period for which the nonpunitive grade is assigned.

(2) If the veteran or servicemember is enrolled in a course which does not lead to a standard college degree and for which a monthly certification of attendance is required, the educational institution may use the monthly certification of attendance to report nonpunitive grades provided VA will receive the report within the time period stated in paragraph (b)(1) of this section.

(Authority: 38 U.S.C. 1434, 1784)

(c) *Attendance records.* Nothing in this section or in any section in 38 CFR Part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for

any course leading to a standard college degree.

(Authority: 38 U.S.C. 1434, 1785)

24. In § 21.7158, paragraph (b) and its authority citation are revised to read as follows:

**§ 21.7158 False, late, or missing reports.**

(b) *Educational institution or training establishment.* (1) VA may hold an educational institution or training establishment liable for overpayments which result from the educational institution's or training establishment's willful or negligent failure to report excessive absences from a course or discontinuance or interruption of a course by a veteran or servicemember or from willful or negligent false certification by the educational institution or training establishment. See § 21.7144(b).

(2) When an educational institution or training establishment willfully and knowingly submits a false report or certification, VA may disapprove a course for further enrollments and may discontinue educational assistance to veterans and servicemembers already enrolled. VA will apply the provisions of §§ 21.4202(b), 21.4207 and 21.4208 of this part in the same manner as they are applied in making similar determinations regarding enrollments under 38 U.S.C. Chapter 34.

(Authority: 38 U.S.C. 1434, 1790; Pub. L. 98-525, Pub. L. 99-576)

25. Section 21.7159 and its authority citation are revised to read as follows:

**§ 21.7159 Reporting fee.**

In determining the amount of the reporting fee payable to educational institutions or joint apprenticeship training committees acting as training establishments for furnishing required reports, VA will apply the provisions of § 21.4206 of this part in the same manner as they are in the administration of 38 U.S.C. Chapters 34 and 36.

(Authority: 38 U.S.C. 1434, 1784; Pub. L. 98-525, Pub. L. 99-576)

26. In § 21.7170, paragraph (a) is revised and an authority citation is added to read as follows:

**§ 21.7170 Course measurement.**

(a) Section 21.4270 (except those portions of paragraph (a) and footnotes dealing with high school, cooperative and farm cooperative training)—  
Measurement of courses,

(Authority: 38 U.S.C. 1434, 1788)

27. Section 21.7172 is added to read as follows:

**§ 21.7172 Measurement of concurrent enrollments.**

(a) *Conversion of units of measurement required.* Where a veteran enrolls concurrently in courses offered by two schools and the standards for the measurement of the courses pursued concurrently in the two schools are different, VA will measure the veteran's enrollment by converting the units of measurement for courses in the second school to their equivalent in units of measurement required for the courses in the program of education which the veteran is pursuing at the primary institution. This conversion will be accomplished as follows.

(1) If VA measures the course at the primary institution on a credit-hour basis (including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis as provided in footnote 6 to § 21.4270(a) of this part, and

(i) VA measures the course in the second school on a mixed basis as provided in § 21.4270(b) of this part, VA will add to the credit hours the veteran is pursuing at the primary institution the credit hours attributable to any course the veteran is pursuing at the second school which VA could measure on a credit-hour basis. The clock hours attributable to the other courses pursued at the second school will be converted to credit hours; or

(ii) VA measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.

(2) If VA measures the course at the primary institution on a mixed basis as provided in § 21.4270(b) of this part, and

(i) VA measures the course at the second school on a credit-hour basis, the credit hours pursued at the second school will be added to the credit hours the veteran is pursuing at the primary institution and the resulting credit hours will be used in making the calculations required by § 21.4270(b) of this part; or

(ii) VA measures the courses at the second school on a clock-hour basis, the clock hours being pursued at the second school will be added to those pursued at the primary institution before making the calculations required by § 21.4270(b) of this part.

(3) If VA measures the courses pursued at the primary institution on a clock-hour basis, and

(i) VA measures the courses pursued at the second school on a mixed basis, the courses pursued at the second school which VA can measure on credit-

hour basis for at least one program at the second school will be converted to clock hours and the resulting clock hours added to determine the veteran's training time; or

(ii) VA measures the courses pursued at the second school on a credit-hour basis, including courses which qualify for credit-hour measurement on the basis of footnote 6 to § 21.4270(a) of this part, VA will convert the credit hours to clock hours to determine the veteran's training time.

(Authority: 38 U.S.C. 1434, 1788)

(b) *Conversion of clock hours to credit hours.* If the provisions of paragraph (a) of this section require VA to convert clock hours to credit hours, it will do so by—

(1) Dividing the number of credit hours which VA considers to be full-time at the educational institution whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and

(2) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(1) of this section. VA will drop all fractional hours.

(Authority: 38 U.S.C. 1434, 1788)

(c) *Conversion of credit hours to clock hours.* If the provisions of paragraph (a) of this section require VA to convert credit hours to clock hours, it will do so by—

(1) Dividing the number of clock hours which VA considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and

(2) Multiplying each credit hour by the number determined in paragraph (c)(1) of this section. VA will drop all fractional hours.

(Authority: 38 U.S.C. 1434, 1788)

(d) *Standards for measurement the same.* Where the standards for measurement of the courses pursued concurrently in the two schools are the same, VA will measure the veteran's enrollment by adding together the units of measurement for the courses in the second school and the units of measurement for the courses in the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution. If courses at both schools are measured on a mixed basis so that the provisions of § 21.4270(b) of this part must be applied

to the enrollment, VA will separately add the credit hours and the clock hours first, and then apply the provisions of § 21.4270(b) of this part. In applying these provisions VA will use the standard for full time at the primary institution.

(Authority: 38 U.S.C. 1434, 1788)

28. In § 21.7220, paragraphs (b)(1), (b)(6), and (b)(9) are revised to read as follows:

§ 21.7220 Course approval.

\* \* \* \* \*

(b) \* \* \*

(1) § 21.4250 (except paragraphs (a) and (c)(1))—Approval of courses,

\* \* \* \* \*

(6) § 21.4258—Notice of approval,

\* \* \* \* \*

(9) § 21.4265 (except paragraph (f)(1))—Practical training approved as institutional training,

\* \* \* \* \*

29. In § 21.7222, paragraphs (h) and (i) are removed and paragraphs (d), (e), (f), and (g) and the authority citation for the section are revised to read as follows:

§ 21.7222 Courses and enrollments which may not be approved.

\* \* \* \* \*

(d) A course, or combination of courses, consisting of instruction offered by an educational institution alternating with instruction in a business or industrial establishment, commonly called a cooperative course;

(e) A course, or a combination of courses consisting of institutional agricultural courses and concurrent agricultural employment, commonly called a farm cooperative course;

(f) An independent study course which does not lead to standard college degree; or

(g) A refresher, remedial or deficiency course.

(Authority: 38 U.S.C. 1434, 1673; Pub. L. 98-525, Pub. L. 99-576)

30. In § 21.7310, paragraph (b)(3) is revised to read as follows:

§ 21.7310 Civil rights.

\* \* \* \* \*

(b) \* \* \*

(3) § 21.4302—Proprietary vocational schools and training establishments,

\* \* \* \* \*

[FR Doc. 89-14141 Filed 6-16-89; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-124, RM-6663]

Radio Broadcasting Services; Madisonville, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Major Broadcasting Corporation proposing the allotment of Channel 258A to Madisonville, Tennessee, as that community's first local FM service. A site restriction of 5.3 kilometers (3.3 miles) south of the city is required. The coordinates are 35-28-23 and 84-22-14.

DATES: Comments must be filed on or before August 4, 1989, and reply comments on or before August 21, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Robert S. Stone, Esquire, McCampbell & Young, Suite 2021 Plaza Tower, P. O. Box 550, Knoxville, TN 37901-0550 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-124, adopted May 22, 1989, and released June 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-14429 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-131, RM-6702]

Radio Broadcasting Services; Grand Coulee, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Wheeler Broadcasting, Inc., licensee of Station KEYG-FM, Channel 253C2, Grand Coulee, Washington, proposing the substitution of Channel 253C for Channel 253C2 at Grand Coulee and modification of the station's license to specify operation on the higher class co-channel. The substitution can be accomplished in compliance with the Commission's minimum separation requirements at the site specified in the petition. The coordinates are 47-52-48 and 118-58-20. Canadian concurrence must be obtained.

DATES: Comments must be filed on or before August 4, 1989, and reply comments on or before August 21, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Barry A. Friedman, Esquire, Wilner & Scheiner, 1200 New Hampshire Avenue, NW., Suite 300, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-131, adopted May 23, 1989, and released June 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's

copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-14431 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 89-129, RM-6675]

#### Radio Broadcasting Services; Lake Geneva, WI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Southern Wisconsin Company, Inc., proposing the allotment of Channel 241A to Lake Geneva, Wisconsin, as that community's first local FM service. A site restriction of 2 kilometers (1.2 miles) northwest of the city is required. The coordinates are 41-36-50 and 88-26-51. Canadian concurrence must be obtained for the proposal.

**DATES:** Comments must be filed on or before August 4, 1989, and reply comments on or before August 21, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Donald E. Martin, Esquire, Spencer W. Weisbroth, Esquire, Donald E. Martin, P.C., Suite 200, 2000 L Street, NW., Washington, DC 20036 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-129, adopted May 23, 1989, and released June 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-14430 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

#### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AB-26

#### Endangered and Threatened Wildlife and Plants; Proposed Determination of Experimental Population Status for an Introduced Population of Guam Rails on Rota in the Commonwealth of the Northern Mariana Islands

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Guam rail, an endangered species endemic to Guam, has been extirpated from its entire historical range primarily as a result of predation by the introduced brown tree snake (*Boiga irregularis*). Studies on the snake suggest that it will be many years before techniques can be developed to

control or eliminate snakes on Guam. The habitat on Guam has been made unsuitable for the rail for the indefinite future due to predation by the snake.

The U.S. Fish and Wildlife Service (Service), in cooperation with the Guam Division of Aquatic and Wildlife Resources (Guam Division) and the Commonwealth Division of Fish and Wildlife (Commonwealth Division), proposes to introduce up to 500 captive-bred Guam rails (*Rallus owstoni*) onto the island of Rota in the Commonwealth of the Northern Mariana Islands over a 5-year period. Although a population of rails now exists in captivity, these birds may lose their ability to survive in the wild after several generations. The establishment of a wild population on Rota would assure that a source of wild birds would be available for future reintroduction to Guam when the brown tree snake has been controlled or eradicated.

The Service proposes that the Rota population be designated a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended (Act). The species is currently protected at 13 different captive propagation facilities and nonessential status would provide for flexibility in managing the Rota population.

Accordingly, a special rule describing circumstances under which taking of introduced Guam rails would be permitted is being proposed in conjunction with this proposal to establish the nonessential experimental population.

Permitted management actions involving take within the meaning of the Act would include recapture of rails to replace transmitters, provide veterinary care, return animals to captivity that are severely injured or diseased, or to recapture for reintroduction to Guam.

**DATES:** Comments on this proposed rule and the draft Environmental Assessment must be received by July 19, 1989.

**ADDRESSES:** Comments should be sent to the Field Supervisor, Environmental Services, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, Honolulu, HI 96813. (Telephone: (808) 541-2749 or FTS 551-2749). A draft Environmental Assessment, a draft Finding of No Significant Impact, and other materials relating to this proposed rule are available for public inspection by appointment during normal business hours at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest Kosaka, Field Supervisor,

Environmental Services at the above address [telephone: (808) 541-2749 or FTS 551-2749].

#### SUPPLEMENTARY INFORMATION:

##### Background

Guam, 13 degrees 30 minutes north latitude and 145 degrees east longitude, is 49 kilometers (km) (30 miles) long and 7 to 15 km (1 to 9 miles) wide with an area of approximately 550 square km (212 square miles). It is the largest and most developed island in Micronesia. The entire island is encircled by a fringing reef except at small areas comprised of limestone cliffs. A narrow central portion separates the island into a northern, fairly level limestone plateau, and a southern, mountainous area of volcanic origin. The vegetation has been vastly altered by humans, and much of the original forest has been removed. In general, the northern limestone substrate supports a diverse forest, while the southern volcanic portion consists of extensive savannas on the exposed uplands with native "ravine" forests in the comparatively undisturbed, narrow valleys.

The endemic flightless Guam rail formerly occurred island-wide. It was one of the few native birds that occurred more frequently in weedy fields, scrubby second growth, and mixed forests than in uniform tracts of mature forest. Availability of habitat was not a limiting factor; in fact, man's disturbance of the forests might have created habitat for the rail.

The rail population declined drastically between 1963 and 1973, and by the mid 1970's had disappeared from southern Guam. Bird surveys conducted in June 1981 indicated that a population of about 2,000 rails still persisted in northern Guam. By the summer of 1986, however, the species was considered virtually extirpated from the wild.

Several inimical factors are believed to have caused the demise of the Guam rail, but most important was predation on eggs and young by the brown tree snake. Earlier investigations had eliminated excessive taking, pesticides and herbicides, inter-specific competition, and avian diseases as the causes for the rail's drastic declines in the 1980's and 1970's. More recent studies clearly implicate the snake as the most important factor in the demise of the rail as well as the other native forest birds of Guam.

The ubiquitous distribution and high density of brown tree snakes has now so altered the primary habitat of the Guam rail that this habitat is no longer suitable for sustaining the rail. The basic habitat components required by the rail

on Guam have essentially been made unavailable for the indefinite future due to the pervasive threat of the brown tree snake.

When it was evident that the rail faced imminent extinction, the Guam Division, a consortium of zoos under the auspices of the American Association of Zoological Parks and Aquariums (AAZPA), and the Service embarked on a captive propagation program by capturing as many rails as possible. Agreements were entered into whereby cooperating zoos agreed to develop techniques for propagating the rail in captivity as well as maintaining a viable population with maximum genetic diversity. The captive flock presently consists of more than 112 rails which are being propagated at 13 facilities: the Division's facilities on Guam; National Zoological Park, Front Royal, Virginia; Bronx Zoo, New York, New York; Cincinnati Zoo, Cincinnati, Ohio; Pittsburgh Aviary, Pittsburgh, Pennsylvania; Sedgewick County Zoo and Botanical Garden, Wichita, Kansas; Lowry Park Zoological Garden, Tampa, Florida; Riverbanks Zoological Park, Columbia, South Carolina; Greater Baton Rouge Zoo, Baton Rouge, Louisiana; Trevor Teaching Zoo, Millbrook, New York; Philadelphia Zoological Gardens, Philadelphia, Pennsylvania; San Diego Zoo, San Diego, California; and Kansas City Zoological Garden, Kansas City, Missouri. The number of facilities propagating rails is expected to increase as more zoos in various parts of the country are enlisted as cooperators.

The rail has been so prolific in captivity that it will be possible to use some of the excess progeny for release programs without jeopardizing the continued existence of this species or causing deterioration in genetic diversity of the captive flock. It is estimated that the mainland zoos could produce up to 100 birds for release annually without adversely affecting the remaining captive stock.

The draft Guam and Rota Endangered Forest Birds Recovery Plan (which is in the final stages of the Service approval process) recommends establishment of self-sustaining populations of the Guam rail in other suitable sites outside its historic range because there is no assurance that the snake will be controlled or eliminated on Guam in the foreseeable future. This proposal is intended to result in the release and establishment of Guam rails in previously disturbed but suitable habitats on Rota (i.e., habitats similar to those on Guam prior to the introduction of the snake). Further, this population would be managed with the long-term

objective of providing a source of "wild" rails for reestablishment on Guam when the brown tree snake can be eliminated or controlled. Captive-held rails, while capable of reproducing and surviving in captivity, may, after several generations, lose their ability to survive in the wild. A population of rails on Rota would assure that a source of rails capable of surviving in the wild would be available for reintroduction to Guam. This project is believed to be an effective means for promoting long-term conservation and recovery of the rail.

##### Status of Experimental Population

The Service proposes that the experimental population of Guam rails on Rota be designated as a nonessential experimental population according to the provisions of section 10(j) of the Act. The population would be treated as a threatened species, rather than an endangered species, for the purposes of section 4(d) and 9 of the Act.

The nonessential status would be appropriate for the following reasons: (1) Although the Guam rail is virtually extinct in the wild, robust captive flocks have been established on Guam and in 12 cooperating zoos and aviaries on the mainland; (2) care and maintenance of the captive flocks are of the highest order and it is not likely that disease or other sources of mortality are likely to threaten the survival of the species; and (3) the Guam rail breeds readily in captivity, resulting in the availability of rails in excess of needs for the captive flock which can be made available for release. The taking of approximately 500 rails over the 5-year duration of this project from these sources of captive-reared progeny would not threaten the survival of this species even if all of the animals released into the wild were to succumb to natural or man-caused mortality.

Designating the Rota population as a nonessential experimental population would enable the Service to propose a special rule which would authorize considerable discretion in managing the population. The proposed protective regulations would be necessary and advisable to provide for the conservation of the rail, especially during the initial stages of the translocation program.

The proposed special rule would stipulate that agents of the Commonwealth Division, the Guam Division, and the Service would be authorized to take animals which need special care or which are causing depredation problems. Taking "problem" rails by killing would be avoided and resorted to only if there

were no other viable alternatives. Live capture and release into other suitable remote habitats would be the preferred form of take whenever possible.

The special rule would also have a provision that would allow for special take by private individuals if the experimental population becomes well established on Rota. This special take would be allowed under regulations drafted by the Commonwealth of the Northern Marianas once the Service has determined that the rail has become well established and occupies all suitable habitat island-wide. These flexible rules would help gain and maintain public support for the project.

The Commonwealth Division has the statutory authority to protect and conserve listed species. As a cooperator in this experimental translocation project, it has agreed to protect the Guam rails proposed for establishment on Rota by promulgating regulations to prohibit the taking of rails, in the Commonwealth. It also has two staff members, a Conservation Officer and a Wildlife Technician, residing on Rota. The Service is satisfied that the Commonwealth's regulatory mechanisms and staff presence are sufficient to provide for conservation of the rail.

#### Location of Experimental Population

Rota, 50 km (31 miles) north of Guam, is one of the three main islands in the Commonwealth. It is located at 14 degrees 10 minutes north latitude and 145 degrees 12 minutes east longitude. It is 20 km (12 miles) long by 6 km (4 miles) wide with an area of approximately 85 square km (33 square miles). Rota is the third largest island in the Commonwealth after Saipan (the largest) and Tinian. A high plateau dominates the western half of the island, with steep cliffs to the north, west, and south that terminate in a narrow coastal shelf. The eastern side of the plateau is characterized by a gentle slope to a large eastern plain. The steep slopes of the upper plateau support well-developed native forests. Taipingot Peninsula juts out from the extreme western tip of the island.

Most lowland areas were used for agricultural purposes in the past. Sugarcane was grown over most of the level areas of Rota during the Japanese Administration prior to World War II. Many of these fields are now re-vegetated with second-growth forests comprised of native and introduced species. Portions of this area are being opened for grazing, for growing agricultural crops, and for residential home sites. The brown tree snake is not found on Rota, and the many weedy

fields and second-growth forests should provide good habitat for the rail. Experimental releases would be made on Commonwealth-owned lands or on lands belonging to cooperating landowners.

Section 10(j) of the Act requires that an experimental population be geographically isolated from any existing population. The establishment of an experimental population on Rota would comply with this rule. Even if the rail were still extant on Guam, Rota is separated from Guam by 50 km (31 miles) of open ocean and it is unlikely that the flightless rail could cross this geographic barrier.

Rota is outside the known historical range of the Guam rail (although it is probable that some type of rail at one time occurred on Rota). Prior to the establishment of an experimental population outside of its probable historic range, the Service must determine that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed. Although the basic habitat components required by the rail on Guam have not been "irreversibly" altered or destroyed in the strict sense, they have essentially been made unavailable to the rail for the indefinite future due to the pervasive threat of the brown tree snake. There is hope that it will eventually be possible to control or eradicate the brown tree snake on Guam, but there is no assurance that this will be possible in the foreseeable future. This indefinite alteration of the rail's primary habitat is tantamount to the unsuitable and irreversible alteration or destruction of its primary habitat.

#### Management

Although this experimental translocation project would be conducted cooperatively by the Guam Division, the Commonwealth Division, and the Service, the Guam Division would be the lead agency and would be primarily responsible for its implementation. The Commonwealth Division may provide assistance in maintenance of the release site or in monitoring the release. The Service would coordinate and expedite any procedural matters relating to the project. Follow-up evaluation of the releases would be conducted by Dr. Stuart Pimm and selected graduate students from the University of Tennessee pursuant to a cooperative agreement between the University and the Guam Division. Studies would focus on dispersal patterns, mortality, reproductive success, overall success of the releases, and general health of the population.

Guam rails selected for release in this experimental translocation project would be tested to ensure that they are disease-free before being transported to Rota for release during the rainy season. A Quarantine Entry Permit for Poultry and Birds (Form CNMI-AHI-001) required by the Commonwealth would accompany all shipments of rails. If deemed prudent because of potential avian disease considerations, only progeny produced by the captive flock on Guam could be used for the proposed releases.

Approximately 50 to 100 captive-reared rails comprised of about an even sex ratio would be released annually. The rails would be released using two methods: (1) Half of the rails would be captured from the release pens and transported 1 km away before being released directly into the wild; (2) the remaining half would be permitted to leave the pens at "will" through doors left open for this purpose. Subsequent releases may consist of rails of varying ages to determine whether any age group is more likely to survive and colonize Rota.

All of the rails would be banded before release with numbered aluminum and color-coded bands. Between 25 and 30 rails per year would also have radio transmitters attached to facilitate determination of dispersal patterns, movements, home range, and mortality. Radio monitoring would be most intense during the first two months after release, followed by monthly or semi-monthly tracking.

A public information and education program would be conducted before rails are brought to Rota and during the actual establishment of the experimental population. The Mayor of Rota's wish to help a "neighbor" would serve as the theme for sustaining public support for the project. The program would encourage the public to report sightings of rails throughout the island. These observations would help determine dispersal and survival of released rails.

The Guam Division would provide annual reports on the results of their and the University of Tennessee follow-up studies. The cooperators would meet annually to assess the status of the experimental project so that any appropriate changes and/or adjustments could be made. A more comprehensive assessment of this project would be made at the end of the 5th year, and a public meeting would be held on Rota to assess public attitudes. The three cooperators would then recommend future direction for the project, including feasibility of limited subsistence taking if the rail becomes well established and

occupies all suitable habitats island-wide.

The Service believes that this project would result in the establishment of a "wild" population of rails which could be used to reestablish the species on Guam when the brown tree snake is eliminated or controlled. For this reason the Service finds that the release and establishment of an experimental population of Guam rails on Rota would further the conservation of this species. (See section 10(j)(2)(A) of the Act; 50 CFR 17.81(b).)

**Public Comments Solicited**

The Service intends that any rule finally adopted be as effective as possible. Therefore, comments or recommendations concerning any aspects of this proposed rule or its accompanying draft Environmental Assessment are hereby invited to be submitted from the public, concerned government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible and must be received at the above address within 30 days after publication of this proposed rule in the Federal Register. If appropriate, a public meeting may be conducted with interested members of the public.

Final promulgation of a rule to implement this proposed action will take into consideration any comments or additional information received by the Service. The regulation shall, to the maximum extent practicable, represent an agreement between the U.S. Fish and Wildlife Service, the affected State and

Federal agencies, and persons holding any interest in land which may be affected by establishment of an experimental population.

**National Environmental Policy Act**

A draft Environmental Assessment (EA) and a draft Finding of No Significant Impact (FONSI) have been prepared pursuant to the National Environmental Policy Act. The draft EA and FONSI are available to the public for review and comments at the Service's Pacific Islands Office at the above address. The draft EA will form the basis for a decision as to whether this proposal is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500-1508).

**Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act**

The Service has determined that this would not be a major rule as defined by Executive Order 12291. The rule as proposed does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96-354). The introduction sites would be on comparatively undeveloped areas on the island of Rota. The introduction of a nonessential

experimental population into this area is not expected to have any adverse impact on public use of the immediate and surrounding area. No private entities would be affected by this action.

**Author**

The principal author of this proposal is Ernest Kosaka, Field Supervisor, Environmental Services, U.S. Fish and Wildlife Service, Pacific Islands Office, Honolulu, Hawaii [(808) 541-2749].

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (Agriculture).

**Proposed Regulation Promulgation**

Accordingly, it is hereby proposed to amend Part 17, Chapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

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; and 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 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the existing entry for this species as shown below:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Species rules
Common name	Scientific name						
<b>Birds</b>							
Rail, Guam.....	<i>Rallus owstoni</i> .....	Western Pacific Ocean, USA.	Western Pacific Ocean, USA.	E	146E, 156	N/A	N/A
Rail, Guam.....	<i>Rallus owstoni</i> .....	Western Pacific Ocean, USA.	Rota.....	XN	146E, 156	N/A	17.84(f)

3. It is proposed that 50 CFR 17.84 be amended by adding new paragraph (f) as follows:

**§ 17.84 Special rules—vertebrates.**

(f) *Guam Rail (Rallus owstoni)*. (1) The Guam rail population identified in paragraph (f)(7) of this section is a nonessential experimental population.

(2) No person shall take this species, except:

(i) In accordance with a valid permit issued by the Service under § 17.32 for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or

(ii) As authorized by the laws and regulations of the Commonwealth of the Northern Mariana Islands, after the Service has made the determination that

the experimental population has become well established and occupies all suitable habitat island-wide.

(3) Any employee of the Service, the Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife, or the Guam Division of Aquatic and Wildlife Resources who is designated for such purposes, may take a Guam rail without a permit if such action is necessary to:

(i) Aid a sick, injured, or orphaned specimen;

(ii) Dispose of a dead specimen;

(iii) Salvage a dead specimen which may be useful for scientific study;

(iv) Take an animal which is responsible for depredations to personal property if it has not been possible to otherwise eliminate such depredations and/or loss of personal property, provided that such taking must be done in a humane manner and may involve injuring or killing the bird only if it has not been possible to eliminate depredations by live capturing and releasing the specimen unharmed in other suitable habitats; or

(v) Take birds for approved reintroduction on Guam.

(4) Any violation of applicable Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife conservation laws or regulations with respect to the taking of this species (other than taking as described in paragraph (f)(2)(ii) of this section) will

also be a violation of the Endangered Species Act.

(5) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife laws or regulations or the Endangered Species Act.

(6) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (f) (2) through (5) of this section.

(7) The sites for introduction of Guam rails on Rota, Commonwealth of the Northern Mariana Islands, are on an island separated from Guam by 50 kilometers of ocean. The last known observation of an individual of this species occurred near the northern tip of Guam which is closest to the island of Rota. No intermingling of these populations will occur since this species

has been extirpated in the wild on Guam. The Rota release sites are of necessity outside the historic range of the Guam rail, as described in this proposed rule, because its primary range has been unsuitably and indefinitely altered by the brown tree snake.

(8) The nonessential experimental population on Rota will be checked periodically by staff of the Commonwealth of Northern Mariana Islands Division of Fish and Wildlife and cooperating staff from the University of Tennessee to determine dispersal patterns, mortality, and reproductive success. The overall success of the releases and general health of the population will also be assessed.

\* \* \* \* \*

Dated: May 10, 1989.

Maryanne C. Bach,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-14407 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register

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Monday, June 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 COMMERCE

### Bureau of Export Administration

[Docket No. 90359-9059]

#### Foreign Availability Assessment; Aramid Yarn (Kevlar)

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

**ACTION:** Notice of foreign availability determination.

**SUMMARY:** The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by section 5(f) and (h) of the Export Administration Act of 1979 (EAA), as amended, to initiate and review claims of foreign availability on items controlled for export for national security purposes.

OFA has completed an assessment on aramid yarn (kevlar), which is controlled under Export Control Commodity Number (ECCN) 1746A and ECCN 1763A of the Commodity Control List. Based on this assessment, the Department of Commerce has not found foreign availability for this commodity.

**FOR FURTHER INFORMATION CONTACT:** William Parker, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-3564.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Office of Foreign Availability has completed an assessment on the foreign availability of aramid yarn (kevlar). This commodity is used in the manufacture of advanced composite materials controlled for national security purposes under ECCN 1746A and ECCN 1763A of the Commodity Control List. The purpose of the assessment was to investigate the extent of availability of this commodity and to determine if, and to what extent, the export controls must be removed.

The Office of Foreign Availability has completed its assessment of the availability of aramid yarn (kevlar) from non-U.S. sources. It has not found foreign availability and has recommended that the controls not be changed. Therefore, the Bureau of Export Administration will not publish regulations removing the national security controls on aramid yarn (kevlar).

If OFA receives substantive new evidence affecting this foreign availability determination, the assessment will be re-evaluated. Inquiries concerning the scope of this assessment may be directed to the Office of Foreign Availability at the above address.

Dated: June 14, 1989.

**James M. LeMunyon,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 89-14419 Filed 6-16-89; 8:45 am]

BILLING CODE 3510-DT-M

#### Computer Peripherals, Components and Related Test Equipment, Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held July 11, 1989, 9:30 a.m., 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 with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

##### Agenda

###### General Session

1. Opening Remarks by the Chairman & Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers of Comments by the Public.
4. Report on Progress of GFW/G-COM Eligibility of Removable Disk Packs.
5. Report on Possible Involvement of the Committee with High Definition TV (HDTV).

6. Report on Findings of a 10 Megabyte Bulgarian Disk Drive.

7. Report on OEM Sales to the Bloc.

8. Discussion on Suitability of Note 9 and Note 12 Parameters for Graphics Workstations.

9. Cipher Presentation Follow-Up form the May 16 Meeting.

10. Presentation of the Committee Outline and the 1989 Work Plan and Annual Report.

##### Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee 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 or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: June 13, 1989.

**Betty A. Ferrell,**

*Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.*

[FR Doc. 89-14421 Filed 6-16-89; 8:45 am]

BILLING CODE 3510-DT-M

**International Trade Administration**

[App. No. 89-0008]

**Export Trade Certificates of Review****AGENCY:** International Trade Administration, Commerce.**ACTION:** Notice of issuance of an export trade certificate of review.**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to FEXCORP, Inc. This notice summarizes the conduct for which certification has been granted.**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Certified Conduct***Export Trade**Products*

Wood chips (both hardwood and softwood), including residue wood chips and roundwood wood chips.

*Export Trade Facilitation Services (as They Relate to the Export of Products)*

All Export Trade Facilitation Services, including consulting; international market research; advertising; marketing; insurance; product research and design exclusively for export; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods.

*Export Markets*

The Export Markets include all parts of the world except the United States

(the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Members (in Addition to Applicant)*

Coosaw Chip Co., Inc., Coosawhatchie, South Carolina; Dempsey Wood Products, Inc., Orangeburg, South Carolina; W.M. Sheppard Lumber Co., Inc., Brooklet, Georgia; and Thompson Hardwoods, Inc., Hazlehurst, Georgia.

*Export Trade Activities and Methods of Operation*

To engage in Export Trade in the Export Markets:

1. On its own behalf and for its own account, FEXCORP may:

a. Bid for the sale of, and contract to sell, Products to buyers in the Export Markets;

b. Obtain quotes and purchase Products from its Members and, as necessary, from other domestic suppliers individually, for the sole purpose of export to buyers in the Export Markets; and

c. Upon receiving or anticipating a request from a buyer in the Export Markets for the price of Products, FEXCORP may ask one or more of its Members or other domestic suppliers individually to supply a price quotation to FEXCORP for Products, may aggregate the price and supply data received, may add its own mark-up to the composite price, and may transmit a price quotation based on such composite price and mark-up to the buyer. Upon placement of an order by a buyer, FEXCORP may purchase Products and ship Products to the buyer.

2. FEXCORP may provide Export Trade Facilitation Services to its Members and individually to other domestic suppliers.

3. FEXCORP may prohibit its Members from selling, assigning, or placing any encumbrance or lien upon their shares in FEXCORP, without first giving written notice to FEXCORP of the proposed transfer and giving FEXCORP the option to repurchase the shares.

4. FEXCORP and its Members may exchange:

a. Information relating solely to the Export Trade in the Export Markets (such as present and projected capacity, production, inventories, costs, prices, sales, orders, terms of marketing or sale, and strategies or methods of operation) of FEXCORP or any Member;

b. Information (such as selling strategies, prices, projected demand,

and customary terms of sale) solely about the Export Markets;

c. Information on costs specific to exporting to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage, handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing); and

d. Information that is generally available to the trade or public.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: June 13, 1989.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 89-14392 Filed 6-16-89; 8:45 am]

BILLING CODE 3510-DR-M

**United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review**

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of request for panel review of amendment to final results of Antidumping Duty Administrative Review made by International Trade Administration, Import Administration, respecting replacement parts for self-propelled bituminous paving equipment from Canada filed by Allatt Paving Equipment Division of Ingersoll-Rand Canada, Inc. (formerly Fortress Allatt, Ltd.) and/or Northern Fortress Ltd. with the United States section of the binational secretariat on June 7, 1989.

**SUMMARY:** On June 7, 1989, Allatt Paving Equipment Division of Ingersoll-Rand Canada, Inc. (formerly Fortress Allatt, Ltd.) and/or Northern Fortress Ltd. filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Amendment to Final Results of an Antidumping Duty Administrative Review, respecting Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada, Import Administration File Number A-122-057, made by the International Trade Administration, Import Administration.

The Amendment to the Final Results was published on May 8, 1989 [54 FR 19581], (the Final Results were published on March 27, 1989 [54 FR 12467]). The Binational Secretariat has assigned File Number USA 89-1904-05 to this Request for Panel Review.

**FOR FURTHER INFORMATION CONTACT:**

James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the *Federal Register* on December 30, 1988, [53 FR 53212]. The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on June 7, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 7, 1989);

(b) A Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 24, 1989); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 13, 1989.

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89-14420 Filed 6-16-89; 8:45 am]

BILLING CODE 3510-DA-M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Asian Roundtable Conference

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the United States Commission on Civil Rights will convene an Asian Roundtable Conference at 9:00 a.m. on June 23, 1989, and adjourn at 5:00 p.m., in the Kellogg Conference Center, at the Columbia University, 420 West 118th Street, New York, NY 10027. The purpose of the conference is to elicit input to help set the Commission's agenda for the 1990s on Asian civil rights issues.

Persons desiring additional information should contact Harriet O. Duleep, Project Director, (202) 376-8582. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Staff Director's office at least five (5) days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 12, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-14413 Filed 6-16-89; 8:45 am]

BILLING CODE 6335-01-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Request for Bilateral Textile Consultations With the Government of Korea

June 14, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:**

Kimfang Pham, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

**SUPPLEMENTARY INFORMATION:**

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the

Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 25, 1989, the Government of the United States requested consultations with the Government of Korea regarding imports of babies' garments and clothing accessories in Category 239, produced or manufactured in Korea. This request was made on the basis of the current bilateral textile agreement between the Governments of the United States and Korea.

The United States reserves the right to control imports at the established level. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Korea, further notice will be published in the *Federal Register*.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see *Federal Register* notice 53 FR 44937, published on November 7, 1988).

Anyone wishing to comment or provide data or information regarding the treatment of Category 239 under the agreement with the Government of Korea, or in any aspect thereof, or to comment on domestic production or availability of products included in this category, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-14422 Filed 6-16-89; 8:45 am]

BILLING CODE 3510-DR-M

**DEPARTMENT OF DEFENSE****Department of the Navy****Government-Owned Inventions;  
Availability for Licensing****AGENCY:** Department of the Navy, DOD.**ACTION:** Notice of availability of invention for licensing.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is made available for licensing by the Department of the Navy.

Copy of patent cited is available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for \$1.50 each. Requests for copy of patent must include the patent number.

**DATE:** June 19, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCIP), Arlington, Virginia 22217-5000, telephone (202) 696-4001.

Patent 4,255,810: Jam Resistant Frequency Modulation System; filed 13 January 1965; patented 10 March 1981.

Dated: June 14, 1989.

Sandra M. Kay,

*Department of the Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 89-14424 Filed 6-16-89; 8:45 am]

BILLING CODE 3810-AE-M

**DEPARTMENT OF ENERGY****Assistant Secretary for International  
Affairs and Energy Emergencies****Proposed Subsequent Arrangement;  
Peaceful Uses of Atomic Energy; USA  
and EURATOM**

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-EU-959, for the sale of 1 gram of uranium depleted in the isotope uranium-235, 3 grams of uranium enriched to an average of 2 percent in the isotope uranium-235, and 1 gram of uranium enriched to 49 percent in the isotope uranium-235 to the

Netherlands Energy Research Foundation for use as standard reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 14, 1989.

Richard H. Williamson,

*Deputy Assistant Secretary for International Affairs.*

[FR Doc. 89-14467 Filed 6-16-89; 8:45 am]

BILLING CODE 6450-01-M

**Proposed Subsequent Arrangement;  
Civil and Peaceful Useful of Atomic  
Energy; USA and EURATOM**

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Spain concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer:

RTD/EU(SP)-20 for the transfer of 367.107 kilograms of uranium, containing 2.933 kilograms of the isotope uranium-235 (0.8 percent enrichment), in the form of uranyl nitrate, for use as fuel for electric power generation.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 14, 1989.

Richard H. Williamson,

*Deputy Assistant Secretary for International Affairs.*

[FR Doc. 89-14468 Filed 6-16-89; 8:45 am]

BILLING CODE 6450-01-M

**ENVIRONMENTAL PROTECTION  
AGENCY**

[OPTS-140115; FRL-3603-5]

**Pesticides Data; Disclosure to  
Congress and the General Accounting  
Office****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** EPA has provided certain information to the General Accounting Office (GAO) and to the House Subcommittee on Environment, Energy and Natural Resources which was submitted to EPA under sections 7 and 17 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Subcommittee and GAO requested this information in connection with the Subcommittee's review of EPA's implementation of the pesticide export provisions of section 17 of FIFRA. Some of the information provided to the Subcommittee and to GAO may be entitled to treatment as confidential business information.

**FOR FURTHER INFORMATION CONTACT:** Sherell A. Sterling, Compliance Division (EN-342), Office of Compliance Monitoring, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, (202) 382-7314.

**SUPPLEMENTARY INFORMATION:** EPA has received requests from the GAO and the Environment, Energy and Natural Resources Subcommittee of the House Committee on Government Operations for certain information submitted to EPA by pesticide manufacturers. Specifically, GAO and the Subcommittee have requested certain production information submitted to EPA under section 7 of FIFRA and certain export notification information submitted under section 17 of FIFRA. EPA has provided the requested information to GAO and to the Subcommittee.

Under section 7 of FIFRA, pesticide producers are required to identify the types, amounts, and active ingredients of pesticides which they produce and sell in a given year. This information was provided to GAO and the Subcommittee for pesticides exported from the United States in the years 1985, 1986, or 1987. Under section 17(a), exporters of unregistered pesticides must notify EPA of the export, providing a statement from the purchaser acknowledging that the pesticide is unregistered and a certification that export did not take place prior to receipt of a signed acknowledgement statement. This information was also made

available to GAO and the Subcommittee for those years.

The Subcommittee has requested this information in connection with its review of EPA's implementation of the pesticide export provisions of section 17 of FIFRA. GAO is assisting the Subcommittee in its review. EPA is required to disclose the requested information to GAO and to the Subcommittee under its regulations at 40 CFR 2.209(b), made applicable to FIFRA information through 40 CFR 2.307(h)(1).

Some of the information provided to GAO and to the Subcommittee may be entitled to treatment as confidential business information. Accordingly, EPA is providing this notice to all affected businesses. In accordance with 40 CFR 2.209(b), EPA has notified GAO and the Subcommittee staff that certain of this information may be business confidential.

Dated: June 3, 1989.

Victor J. Kimm,

*Acting Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 89-14458 Filed 6-16-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3603-4]

**Extension of the Period for Action on a Recommended Section 404(c) Determination to Prohibit the Specification or Use of an Area as a Disposal Site; Ware Creek**

**AGENCY:** Office of Water, Environmental Protection Agency (EPA).

**ACTION:** Notice of an extension to the period for action on a recommended section 404(c) determination.

**SUMMARY:** On March 15, 1989, EPA Headquarters received Regional documentation including an administrative record supporting a recommended determination to prohibit or restrict the use or specification of the area known as Ware Creek. The subject site is proposed as a disposal site for fill material necessary for the construction of a water supply impoundment to serve James City County, Virginia. In accordance with EPA's section 404(c) regulations, EPA Headquarters initiated final consultation with the Corps of Engineers, the owners of record and the section 404 permit applicant for the proposed project. The purpose of this consultation was to provide appropriate parties a final opportunity to demonstrate to the satisfaction of the Assistant Administrator for Water, that

corrective action would be taken to prevent an unacceptable adverse effect(s) from the proposed discharge. In a subsequent meeting which took place on April 13, 1989, representatives of James City County raised two major issues which they felt necessitated consideration during EPA Headquarters' review of the Regional recommended determination. Specifically, counsel representing James City County asserted that the administrative record submitted to EPA Headquarters by EPA Region III did not include appropriate documents contained in the Corps of Engineers record for the Ware Creek project. Representatives of James City County also suggested that in reaching a final determination on the section 404(c) action, EPA must consider the effects of its action on the potential use of any water supply provided by the proposed Ware Creek impoundment for satisfying regional water supply needs.

In response to the concerns raised by the representatives of James City County, EPA extended the time limit to June 16, 1989 to provide sufficient time to obtain and review additional documents from the Corps of Engineers administrative record on this case. The extension was announced in the *Federal Register* on May 16, 1989 (54 FR 21125). EPA has determined that additional time is required to review the documents from the Corps record to ensure a thorough examination of all issues relevant to EPA's section 404(c) action prior to rendering a final decision with regard to the Ware Creek proposal. EPA therefore has determined that good cause exists to extend the time limit for preparation of a final determination on the recommended determination to prohibit or restrict the use or specification of the area known as Ware Creek. EPA's deadline for a finding on the recommended determination is being extended until close of business, July 10, 1989. This time extension is made under the EPA authority found in 40 CFR 231.8.

**FOR FURTHER INFORMATION, CONTACT:**

Kirk Stark, Chief, Elevated Cases Team, Office of Wetlands Protection—U.S. EPA, 401 M Street, Washington, DC 20460, (202) 475-7799

Dated: June 13, 1989.

William A. Whittington,

*Acting Assistant Administrator for Water.*

[FR Doc. 89-14460 Filed 6-16-89; 8:45 am]

BILLING CODE 6560-50-M

**FEDERAL COMMUNICATIONS COMMISSION**

[DA 89-664]

**Advisory Committee on Advanced Television Service**

June 14, 1989.

A meeting of the Advisory Committee on Advanced Television Service will be held on: July 19, 1989, 2:00 p.m., Commission Meeting Room (Room 856), 1919 M Street NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction.
2. Approval of the last meeting's minutes.
3. Financial report.
4. Progress reports of the three subcommittees.
5. Progress reports from testing laboratories.
6. Consideration of draft testing plans.
7. Date and location of next Steering Committee meeting.
8. Other business.
9. Adjournment.

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Advisory Committee Chairman.

Any questions regarding this meeting should be directed to Richard E. Wiley at (202) 429-7010 or Alex D. Felker at (202) 632-6460.

Federal Communications Commission.

Donna R. Searcy,

*Secretary.*

[FR Doc. 89-14483 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

[DA 89-663]

**Advisory Committee on Advanced Television Service Steering Committee**

June 14, 1989.

A meeting of the Steering Committee of the Advisory Committee on Advanced Television Service will be held on: July 10, 1989, 2:00 p.m., Federal Communications Commission, Commission Meeting Room, Room 856, 1919 M Street NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction.
2. Approval of the last meeting's minutes.
3. Financial report.

4. Progress reports of the three subcommittees.
5. Progress reports from testing laboratories.
6. Consideration of draft testing plans.
7. Date and location of next Steering Committee meeting.
8. Other business.
9. Adjournment.

Interested parties may submit written statements at this meeting. Oral statements and discussion will be permitted under the direction of the Steering Committee Chairman.

Any questions regarding this meeting should be directed to Richard E. Wiley at (202) 429-7010 or David R. Siddall at (202) 632-6460.

Federal Communications Commission.  
**Donna R. Searcy,**  
*Secretary.*  
 [FR Doc. 89-14482 Filed 6-16-89; 8:45 am]  
 BILLING CODE 6712-01-M

**Travel Reimbursement Program, January 1, 1989-March 31, 1989; Summary Report; Corrected**

The following corrections are hereby made to the Summary Report which first appeared in the *Federal Register*/Vol. 54, No. 92/Monday, May 15, 1989:

- Total Number of Sponsored Events: 16.
- Total Number of Sponsoring Organizations: 20.
- Total Number of Commissioners/Employees Attending: 37.
- Total Amount of Reimbursement Expected:

Transportation.....	\$11,895.00
Subsistence.....	9,793.21
Other Expenses.....	1,660.74
<b>Total.....</b>	<b>23,348.95</b>

**Travel Reimbursement Program Individual Event Report Errata:**

(1) Replace the prior Event Report with the following:

*Sponsoring Organization:* NYNEX Service Company, 120 Bloomingdale Road, White Plains, NY 10605.

*Date of the Event:* January 16, 1989.

*Description of the Event:* To attend the Information Industry Liaison Committee (IILC) Meeting.

*Commissioners Attending:* None.  
*Other Employees Attending:* Thomas J. Sugrue—Chief, Policy and Program Planning Division, Common Carrier Bureau.

*Amount of Reimbursement:*

Transportation.....	\$292.00
Subsistence.....	261.50

Other Expenses.....	48.60
<b>Total.....</b>	<b>602.10</b>

(2) Add the following Event Report:  
*Sponsoring Organization:* U. S. West, 1600 7th Avenue, Seattle, WA 98191.  
*Date of the Event:* January 16, 1989.  
*Description of the Event:* To attend the Information Industry Liaison Committee (IILC) Technical Working Meeting.

*Commissioners Attending:* None.  
*Other Employees Attending:* Raymond L. Dujack—Electronics Engineer, Common Carrier Bureau.  
*Amount of Reimbursement:*

Transportation.....	\$306.00
Subsistence.....	215.00
Other Expenses.....	56.33
<b>Total.....</b>	<b>577.33</b>

Federal Communications Commission.

**Donna R. Searcy,**  
*Secretary.*  
 [FR Doc. 89-14484 Filed 6-16-89; 8:45 am]  
 BILLING CODE 6712-01-M

**FEDERAL HOME LOAN BANK BOARD**

**Civic Savings Bank, Portsmouth, OH; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Civic Savings Bank, Portsmouth, Ohio on June 7, 1989.

Dated: June 12, 1989.  
 By the Federal Home Loan Bank Board.  
**John F. Ghizzoni,**  
*Assistant Secretary.*  
 [FR Doc. 89-14472 Filed 6-16-89; 8:45 am]  
 BILLING CODE 6720-01-M

**Horizon Financial, FA, Southampton, PA; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in Section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2)(1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Horizon Financial, FA, Southampton, PA, on June 7, 1989.

Dated: June 12, 1989.  
 By the Federal Home Loan Bank Board.  
**John F. Ghizzoni,**  
*Assistant Secretary.*  
 [FR Doc. 89-14473 Filed 6-16-89; 8:45 am]  
 BILLING CODE 6720-01-M

**Midwest Savings Assoc., FA, Minneapolis, MN; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Midwest Savings Association, Minneapolis, Minnesota on May 4, 1989.

Dated: June 12, 1989.  
 By the Federal Home Loan Bank Board.  
**John F. Ghizzoni,**  
*Assistant Secretary.*  
 [FR Doc. 89-14474, Filed 6-16-89; 8:45 am]  
 BILLING CODE 6720-01-M

**Murray Federal Savings and Loan Assoc., Dallas, TX; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Murray Federal Savings and Loan Association, Dallas, Texas on May 4, 1989.

Dated: June 12, 1989.  
 By the Federal Home Loan Bank Board.  
**John F. Ghizzoni,**  
*Assistant Secretary.*  
 [FR Doc. 89-14475 Filed 6-16-89; 8:45 am]  
 BILLING CODE 6720-01-M

**FSLIC Insurance Premium**

[No. 89-1539]  
 Date: June 8, 1989.  
**AGENCY:** Federal Home Loan Board.  
**ACTION:** Notice.

**SUMMARY:** The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the

Corporation orders the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one quarter of one-eighth of one percent (one thirty-second of one percent) of the total amount of the accounts of the insured members of each insured institution determined as of March 31, 1989.

**EFFECTIVE DATE:** June 19, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mary A. Creedon, Executive Director, FSLIC, (202) 416-2029; or Deborah Siegel, Attorney, Office of General Counsel (202) 906-6848, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

*Whereas*, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *provided* That the total amount so assessed in any one year against any insured institution shall not exceed one eighth of one per centum of the total amount of the accounts of the insured members of such institution and *provided further* That the amount of the additional premium for the calendar year 1989 may not exceed one-sixteenth of one per centum of the total amount of the accounts of the insured members of such institution unless the Bank Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds; and

*Whereas*, The Bank Board, as operating head of the Corporation, by Resolution No. 85-142, dated February 22, 1985, by Resolution No. 85-437, dated June 5, 1985, by Resolution No. 85-770, dated August 28, 1985, by Resolution No. 85-1142, dated December 9, 1985, by Resolution No. 86-213, dated March 6, 1986, by Resolution No. 86-582, dated June 10, 1986, by Resolution No. 86-941, dated September 2, 1986, by Resolution No. 86-1253, dated December 15, 1986, by Resolution No. 87-281, dated March 16, 1987, by Resolution No. 87-610, dated May 27, 1987, by Resolution No. 87-950, dated September 9, 1987, by Resolution No. 87-1254, dated December 14, 1987, by Resolution No. 88-256, dated April 7, 1988, by Resolution No. 88-537, dated

June 29, 1988, by Resolution No. 88-981, dated September 15, 1988, by Resolution No. 89-1267, dated December 7, 1988, and by Resolution No. 89-1028, dated March 15, 1989, ordered assessment against each insured institution of an additional premium for insurance in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, as of September 30, 1985, for the fourth, as of December 31, 1985, for the fifth, as of March 31, 1986, for the sixth, as of June 30, 1986, for the seventh, as of September 30, 1986, for the eighth, as of December 31, 1986, for the ninth, as of March 31, 1987, for the tenth, as of June 30, 1987, for the eleventh, as of September 30, 1987, for the twelfth, as of December 31, 1987, for the thirteenth, as of March 31, 1988, for the fourteenth, as of June 30, 1988, for the fifteenth, as of September 30, 1988 for the sixteenth, and as of December 31, 1988 for the seventeenth; and

*Whereas*, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC, (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85-143, dated February 22, 1985, Resolution No. 85-437, dated June 5, 1985, Resolution No. 85-770, dated August 28, 1985, Resolution No. 85-1142, dated December 9, 1985, Resolution No. 86-213, dated March 6, 1986, Resolution No. 86-582, dated June 10, 1986, Resolution No. 86-941, dated September 2, 1986, Resolution No. 86-1253, dated December 15, 1986, Resolution No. 87-281, dated March 16, 1987, Resolution No. 87-610, dated May 27, 1987, Resolution No. 87-950, dated September 9, 1987, Resolution No. 87-1254, dated December 14, 1987, Resolution No. 88-256, dated April 7, 1988, Resolution No. 88-537, dated June 29, 1988, Resolution No. 88-981, dated September 15, 1988, Resolution No. 88-1267, dated December 7, 1988, and Resolution No. 89-1028, dated March 15, 1989, upon the Corporation's insurance reserves:

*Now, therefore, it is resolved*, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through the first quarter of 1989; and

*Resolved further*, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85-142, require the assessment of additional insurance premiums pursuant to Section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85-142, No. 85-437, No. 85-770, No. 85-1142, No. 86-213, No. 86-582, No. 86-941, No. 86-1253, No. 87-281, No. 87-610, No. 87-950, No. 87-1254, No. 88-256, No. 88-537, No. 88-981, No. 88-1267, and No. 89-1028 in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. Severe pressures on the Corporation exist which necessitate an infusion of additional funds;

3. Postponement of a reduction in the assessment of an additional premium, as provided in section 404(c)(2) of the NHA, will improve the financing environment for selling obligations of the Financing Corporation organized pursuant to the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987;

4. It is appropriate, therefore, to provide for assessment of an additional insurance premium at this time, pursuant to section 404(a)(2) and 404(c)(1) of the NHA, by order of this Corporation; and

*Resolved further*, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the second quarter of 1989, in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of such insured institution determined as of March 31, 1989; and

*Resolved further*, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about June 30, 1989; and

*Resolved further*, That the Executive Director or the Principal Deputy Director of the FSLIC, or a designee of either of them ("Director"), shall determine the amount of the additional premium due, including an offset of one quarter of twenty percent (five percent) of each insured institution's pro rata share of the statutorily prescribed amount as provided in section 404(e)(2) of the NHA, to be paid on or about June 30, 1989, by each insured institution, and shall notify each institution of such amount at least fifteen (15) days prior to the date such amount is due; and

*Resolved further.* That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

*Resolved further.* That the Secretary shall forward this Resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.  
John F. Ghizzoni,  
Assistant Secretary.  
[FR Doc. 89-14471 Filed 6-16-89; 8:45 am]  
BILLING CODE 6720-01-M

#### Midwest Federal Savings and Loan Association, Minneapolis, MN; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Midwest Savings and Loan Association of Minneapolis, Minneapolis, Minnesota ("Association") with the FSLIC as sole receiver for the Association on May 4, 1989.

Dated: June 12, 1989.  
By the Federal Home Loan Bank Board.  
John F. Ghizzoni,  
Assistant Secretary.  
[FR Doc. 89-14476 Filed 6-16-89; 8:45 am]  
BILLING CODE 6720-01-M

#### Murray Savings Association, Dallas, TX; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Murray Savings Association, Dallas, Texas ("Association") with the FSLIC as sole receiver for the Association on May 4, 1989.

Dated: June 12, 1989.  
By the Federal Home Loan Bank Board.  
John F. Ghizzoni,  
Assistant Secretary.  
[FR Doc. 89-14477 Filed 6-16-89; 8:45 am]  
BILLING CODE 6720-01-M

[No. AC-770; FHLBB No. 2787]

#### Pioneer Savings Bank, Lynwood, WA, Final Action Approval of Conversion Application

Date: June 7, 1989.

Notice is hereby given that on May 15, 1989, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Pioneer Savings Bank, Lynwood, Washington for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Seattle, 1501 4th Avenue, 19th Floor, Seattle, Washington, 98101-1693.

By the Federal Home Loan Bank Board.  
John F. Ghizzoni,  
Assistant Secretary.  
[FR Doc. 89-14478 Filed 6-16-89; 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.:* 224-200229-001.

*Title:* Manchester Terminal Corporation Terminal Agreement.

*Parties:* Manchester Terminal Corporation (MTC); Scott Marine Services, Inc. (SMS).

*Synopsis:* The Agreement provides that SMS will pay MTC a facility use charge of \$1.00 per 2000 pounds in lieu of wharf demurrage for all steel pipes received at MTC's terminal facility to be

measured, sorted, bundled, and handled by SMS under the basic agreement.

By Order of the Federal Maritime Commission.

Dated: June 13, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-14404 Filed 6-16-89; 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.:* 224-200255.

*Title:* City of Los Angeles Terminal Agreement.

*Parties:* City of Los Angeles (CLA), California Stevedore Ballast Company (CSBC).

*Synopsis:* The Agreement provides CSBC with a nonexclusive berth assignment covering an area of approximately 30 acres including 1,500 lineal feet of wharf of berthing vessels and assembling, distributing, loading and unloading goods on or from such vessels. The compensation to be paid CLA for such use is a minimum monthly guarantee of \$160,000 with a 50/50 percent monthly revenue sharing structure for wharfage, dockage, storage and demurrage fees until the CLA has received \$200,000. The parties agree to a 25/75 percent sharing thereafter with CLA receiving the 25 percent share.

*Agreement No.:* 224-200147-001.

*Title:* Jacksonville Port Authority Terminal Lease Agreement.

*Parties:* Jacksonville Port Authority (Authority) Sea-Land Service, Inc.

*Synopsis:* The Agreement amends Article 8(b) of the original lease to establish (1) rental charges for approximately 48 acres of property and facilities thereon located at the

Authority's Blount Island Terminal and; (2) provisions for additional rental charges in accordance with the Agreement's Exhibit A, Schedule of Fee and Charges, as different phases of improvements upon the leased premises are completed.

By Order of the Federal Maritime Commission.

Dated: June 14, 1989.

Joseph C. Polking,  
Secretary.

[FR Doc. 89-14469 Filed 6-16-89; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL TRADE COMMISSION

### Presale Availability Rule; Information Collection Requirement

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of application to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501-3518, for clearance of information collection requirements contained in the Presale Availability Rule, 16 CFR Part 702. A three-year extension of the existing clearance, OMB Control No. 3084-0056, is being requested.

**SUMMARY:** The Presale Availability Rule implements the Magnuson-Moss Warranty Act, 15 U.S.C. 2302(b)(1)(A) (1982). It requires retailers selling consumer products that cost more than \$15 and carry written warranties to

make warranties available to prospective purchasers on request. The rule also requires manufacturers of such products to provide retailers the information needed to comply with the presale availability requirement. The supporting statement submitted with the request conforms to the substance of the previous submission. For the purposes of this request, it is assumed that some 700,000 retailers are affected by the rule. Such retailers will devote, in the aggregate, not more than 960,000 hours ensuring compliance with Rule 702. The supporting statement also estimates that some 11,000 manufacturers will devote approximately 50,000 hours per year to rule compliance.

**DATE:** Comments on this application must be submitted on or before July 19, 1989.

**ADDRESS:** Send comments to Mr. Don Arbuckle, FTC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of the application may be obtained from Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Christian S. White, Assistant General Counsel, Federal Trade Commission, Washington, DC 20580, (202) 326-2476.

By direction of the Commission.

Kevin J. Arquit,  
General Counsel.

[FR Doc. 89-14464 Filed 6-16-89; 8:45 am]

BILLING CODE 6750-01-M

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

June 12, 1989.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

### Transactions Granted Early Termination Between: 052989 and 060989

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
Owens & Minor, Inc., Hygeia N.V., National Medical Supply Corporation	89-1663	05/30/89
Edwards Dunlop and Company Limited, The Meade Corporation, Seaboard Paper Company	87-1488	05/30/89
William Dean Singleton, Knight-Ridder, Inc., Twin Coast Newspapers, Inc.	89-1617	05/31/89
Pansophic Systems Incorporated, Genigraphics Corporation, Genigraphics Corporation	89-1631	05/31/89
Fred R. Adams, Jr., Cargill, Incorporated, Shell Egg Business of Sunny Fresh Foods, Inc.	89-1742	05/31/89
Primus Capital Fund II Limited Partnership, Harsco Corporation, Astro Metallurgical Division of Harsco Corporation	89-1751	05/31/89
The Middleby Corporation, Whitman Corporation, Hussmann Corporation	89-1761	05/31/89
Tootal Group Plc, Dimensions, Inc., Dimensions, Inc.	89-1807	05/31/89
Law Companies Group, Inc., W. David Kimbrell and Janet Kimbrell, Hall-Kimbrell Environmental Services, Inc.	89-1755	06/01/89
W. David Kimbrell and Janet Kimbrell, Law Companies Group, Inc., Law Companies Group, Inc.	89-1756	06/01/89
U.S. Province of the Cong. of Srs. of Bon Secours-Paris, Sisters of Charity of Our Lady of Mercy, St. Frances Xavier Hospital and Divine Savior Hospital	89-1769	06/01/89
Borden, Inc., Moore's Quality Snack Foods, Inc., Moore's Quality Snack Foods, Inc.	89-1771	06/01/89
Eastman Kodak Company, Jack E. Brown, Insilco Corporation	89-1710	06/02/89
Eastman Kodak Company, Cyril Wagner, Jr., Insilco Corporation	89-1711	06/02/89
Comdata Holdings Corporation, American Express Company, First Data Resources, Inc. & FundsNet, Inc.	89-1746	06/02/89
Sandoz Ltd., Vaughan Products, Inc., Vaughan Products, Inc.	89-1764	06/02/89
FSWG Associates, Stride Rite Corporation, Stride Rite Corporation	89-1791	06/02/89
Omnicom Group Inc., Boase Massimi Pollitt plc, BMP North America Inc.	89-1794	06/02/89
Huntington Bancshares Incorporated, Mid-America Federal Savings and Loan Association, Mid-America Federal Savings and Loan Association	89-1684	06/05/89
Conseco, Inc., Temple-Inland Inc., National Fidelity Life Insurance Company	89-1765	06/05/89
Dana Corporation, The Superior Electric Company, The Superior Electric Company	89-1799	06/05/89
Dana Corporation, The Superior Electric Company, The Superior Electric Company	89-1800	06/05/89
Russell V. Umphenour, Jr., Winners Corporation, Chick, Inc.	89-1812	06/05/89
Blackwood Hodge p.l.c., H.F. Mason Equipment Corporation, H.F. Mason Equipment Corporation	89-1836	06/05/89
Stephen Levin, PepsiCo, Inc., PepsiCo, Inc.	89-1842	06/05/89
PepsiCo, Inc., Stephen Levin, Erin Investment Corp. and Romet Corp.	89-1843	06/05/89

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
George K. Broady, Aritech Corp., Aritech Corp. (Distribution Division)	89-1848	06/05/89
Amerada Hess Corporation, Transco Energy Company, TXPO Operating Company	89-1851	06/05/89
The Liberty Corporation, Primerica Corporation, Triad Life Insurance Corporation	89-1670	06/06/89
Bridgestone Corporation, TS Industries, Inc., Thermal Systems, Inc.	89-1699	06/06/89
Aktiebolaget Volvo, Ford Motor Company, Park Ridge Corporation	89-1795	06/06/89
Trust under the Will of Testament Alfred G. Mendelson, Rymer Foods Inc., Murry's Inc.	89-1815	06/06/89
Pioneer International Limited, Billy G. Yarbrough, Solano Concrete Company, Inc.	89-1837	06/06/89
Sutter Health, Auburn Faith Community Hospital, Incorporated, Auburn Faith Community Hospital, Incorporated	89-1664	06/07/89
Kenneth R. Thomson, The Lawyers Co-operative Publishing Company, The Lawyers Co-operative Publishing Company	89-1698	06/07/89
Salomon Inc., Spirit Holding Co., Inc., Spirit Holding Co., Inc.	89-1728	06/07/89
GB-Inno-BM S.A., Spirit Holding Co., Inc., Spirit Holding Co., Inc.	89-1729	06/07/89
Salomon, Inc., Interco Incorporated, Central Hardware Company	89-1738	06/07/89
The Common Fund, Stride Rite Corporation, Stride Rite Corporation	89-1790	06/07/89
Jann and Jane Wenner, c/o Straight Arrow Publishers, Inc., Warner Communications, Inc., Lorimar Telepictures Magazines, Inc.	89-1821	06/07/89
Golder, Thoma, Cressey Fund III Limited Partnership, GBP Industries, Inc., GBP Industries, Inc.	89-1853	06/07/89
American Financial Corporation, Bernard E. Munk (89-1818) Michael P. Aquilina (89-1), Pennel Energy Corporation	89-1818	06/08/89
American Financial Corporation, Michael P. Aquilina, Pennel Energy Corporation	89-1819	06/08/89
Deere & Company, Cooper Industries, Inc., Funk Manufacturing Company	89-1820	06/08/89
Hunting Associated Industries Plc, Irvin Industries (DEL) Inc., Irvin Industries (DEL) Inc.	89-1822	06/08/89
Merrill Lynch & Co., Inc., Stanadyne Holdings Corp., Stanadyne, Inc. (Western Steel Division)	89-1834	06/08/89
Tyco Toys, Inc., View-Master Ideal Group, Inc., View-Master Ideal Group, Inc.	89-1839	06/08/89
Robert S. Jepson, Jr., Marietta H. Caron Trust, Caron International, Inc.	89-1852	06/08/89
O.R. Lababedi, IPCO Corporation, The Whitestone Division of IPCO Corporation	89-1854	06/08/89
Pitcairn Group L.P. Daniel J. Sullivan, Pangborn Holdings, Inc.	89-1859	06/08/89
Pitcairn Group L.P., Bitrix N.V., Pangborn Holdings, Inc.	89-1860	06/08/89
Courtaulds plc, Wheeling Stamping Company, Wheeling Stamping Company	89-1758	06/09/89
Blackstone Capital Partners, L.P. Edgcomb Corporation, L.P. Edgcomb Corporation	89-1766	06/09/89
Blackstone Capital Partners, L.P. Edgcomb Corporation, L.P. Edgcomb Corporation	89-1793	06/09/89
Cellular Information Systems, Inc., Century Communications Corp., Baucse Communications, Inc.	89-1817	06/09/89
Chrysler Corporation, Thrifty Rent-A-Car System, Inc., Thrifty Rent-A-Car System, Inc.	89-1823	06/09/89
Addington Resources, Inc., Orlando C. Schiappa, American Industrial Resources & Ohio Coal Construction	89-1827	06/09/89
Osborn Jay Call, Great Western Resources, Inc., GW Petroleum Inc.	89-1864	06/09/89
Manville Corporation, Caroline Hunt Trust Estate, Rosewood Resources, Inc.	89-1889	06/09/89
Liberty Mutual Insurance Company, SteinRoe Equity Trust, SteinRoe Equity Trust	89-1912	06/09/89

**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580. (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-14465 Filed 6-16-89; 8:45 am]

BILLING CODE 6750-01-M

**DEPARTMENT OF THE INTERIOR****Minerals Management Service**

**Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau Clearance Office at the phone number listed below. Comments and suggestions on the requirement should

be made directly to the Bureau Clearance Officer, Minerals Management Service, Mail Stop 632, 381 Elden Street, Herndon, Virginia 22070-4817 and to the Office of Management and Budget Interior Department Desk Officer, Paperwork Reduction Project (1010-XXXX), Washington, DC 20503, telephone (202) 395-7340 with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; Mail Stop 646, 381 Elden Street, Herndon, Virginia 22070-4817.

*Title:* Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS), 30 CFR Part 250.

*OMB Approval Number:* 1010-XXXX.

*Abstract:* Rules governing oil, gas, and sulphur operations in the OCS were consolidated, updated, and published as 30 CFR Part 250 which became effective May 31, 1988. Subparts A, D, E, H, and L of the revised rule contain narrative information collection requirements concerning the conduct of oil and gas and sulphur operations in the OCS which have been approved by OMB. These narrative information collection requirements did not distinguish between sulphur operations and oil and gas operations. The Minerals Management Service proposes to adjust these information collection

requirements by relocating a total of 422 hours into a new proposed Subpart P which is being established for sulphur operations to deal with these activities with great specificity. The information is necessary to ascertain the adequacy of sulphur operations in order to minimize hazards and increase the level of safety of equipment and procedures in drilling, well-completion, well-workover, and production operations.

*Bureau Form Number:* None.

*Frequency:* On occasion.

*Description of Respondents:* Lessees of OCS sulphur leases.

*Estimated Completion Time:* 6.9 hours.

*Annual Responses (Reports):* 18.

*Annual Burden Hours (Reporting):* 124.

*Annual Burden Hours (Recordkeeping):* 298.

*Annual Burden Hours:* 422.

*Bureau Clearance Officer:* Dorothy Christopher, (703) 787-1239.

*Dated:* May 6, 1989.

**William D. Bettenbreg,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 89-14442 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-MR-M

**Office of the Secretary****Great Lakes Coastal Barrier Act of 1988; Availability of Revised, Final Maps Identifying Undeveloped Coastal Barriers Along the Shore of the Great Lakes****AGENCY:** Department of the Interior.**ACTION:** Notice of availability.

**SUMMARY:** Under the provisions of Pub. L. 100-707, the Secretary of the Interior is required to make recommendations to the Congress and prepare and transmit to the Congress revised, final maps identifying undeveloped, unprotected coastal barriers along the Great Lakes shoreline appropriate for inclusion in the Coastal Barrier Resources System (System). This notice announces the availability of the final maps that have been transmitted to Congress. Congress will determine which areas, if any, will be included in the System.

**ADDRESS:** Great Lakes Coastal Barriers Study Group, U.S. Department of the Interior, National Park Service—0473, Washington, DC 20113-7127.

**FOR FURTHER INFORMATION:** Dr. Albert G. Greene, Jr., Great Lakes Coastal Barriers Coordinator, National Park Service, Washington, DC 20013-7127, (202) 343-5881.

**SUPPLEMENTARY INFORMATION:** On November 23, 1988, President Reagan signed into law the Disaster Relief and Emergency Assistance Amendments Act (Pub. L. 100-707). Section 204 of the Act, entitled "Great Lakes Coastal Barrier Act of 1988," amends the Coastal Barrier Resources Act of 1982 to include "those undeveloped coastal barriers along the shore areas of the Great Lakes that are designated by Congress by law after considering the recommendations of the Secretary."

Section 4 of the Coastal Barrier Resources Act (CBRA) established a Coastal Barrier Resources System (System) consisting of 186 undeveloped coastal barrier units along the shorelines of the Atlantic Ocean and the Gulf of Mexico. Sections 5 and 6 of the CBRA prohibit all new Federal expenditures and financial assistance within units of the System unless specifically exempted by the CBRA.

The Great Lakes Coastal Barrier Act of 1988 requires the Secretary of the Interior, to recommend to Congress and prepare maps identifying the boundaries of undeveloped coastal barriers along the shore areas of the Great Lakes that the Secretary considers appropriate for inclusion in the System. Before recommending any undeveloped coastal barrier units, the Secretary is required to update and consider the draft inventory

maps issued for public comment in January 1985 and consult with and provide opportunity for comment by appropriate U.S. Government agencies, State agencies of the States bordering the Great Lakes, and the public.

The 117 areas delineated on 88 draft inventory maps were made available for review and comment on January 12, 1989 (see *Federal Register*, 54 FR 1250). These draft maps had been revised from those issued in 1985 based on aerial photography specifically taken for this study and comments received during the 1985 comment period. Comments on the maps released on January 12, 1989, originally were to be received no later than February 6, 1989, but the comment period was extended through March 14, 1989, (See *Federal Register*, 54 FR 4914).

Under the 1988 Act, the Secretary may not recommend for inclusion in the System any areas that are publicly owned and protected by Federal, State, or local government law or held by a privately-owned organization primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. The 1988 Act also provides that the limitations on the use of Federal expenditures or financial assistance within those units designated by Congress will not apply to existing highways located within the State of Michigan.

The criteria used for delineating the undeveloped coastal barriers on the draft and final maps are those set forth in the Coastal Barrier Resources Act of 1982 and the March 4, 1985, *Federal Register* (42 FR 8698).

The following areas were excluded or modified as a result of information received during the comment period:

*New York*—excluded, NY-10; modified NY-11, NY-14, NY-15 and NY-18.

*Ohio*—modified, OH-1 and OH-06.  
*Michigan*—excluded, MI-11, MI-19, MI-40 and MI-60; modified, MI-01, MI-02, MI-12, MI-15, MI-18, MI-32, MI-38, MI-48, MI-50, MI-51, MI-61, MI-67 and MI-68.

*Wisconsin*—modified, WI-07 and WI-08.

The number of units which met criteria for undeveloped coastal barriers along the Great Lakes shoreline is now 112.

Maps may be inspected by appointment in Room 3327, Main

Interior Building, 1800 C Street, NW., Washington, DC, (202) 343-5881.

Date: June 8, 1989.

Becky Norton Dunlop,

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 89-14480 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-70-M

**Bureau of Land Management**

[AA-230-04-6310-11-2410]

**Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau's clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0113) Washington, DC 20503, telephone (202) 395-7340.

*Title:* Timber Sale Contracting, 43 CFR 5442.1

*OMB Approval Number:* (1004-0113)

*Abstract:* These forms are used by prospective purchasers of Bureau of Land Management timber. This information allows the Bureau to determine the high bidder on sealed bid sales and whether bidders are qualified to bid on oral auction sales.

*Bureau Form Number:* 5440-9

*Frequency:* Occasionally

*Description of Respondents:* Individuals, small business, large corporations.

*Estimated Completion Time:* 1.25 hours each response

*Annual Responses:* 500

*Annual Burden Hours:* 625

*Bureau Clearance Officer:* (Alternate) Rich Iovaine (202) 653-8853

Date: May 26, 1989.

Billy R. Templeton,

*Assistant Director, Land and Renewable Resources.*

[FR Doc. 89-14438 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-84-M

[AA-230-04-6310-11-2410]

**Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contracting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau's clearance officer and to the Office of Management and Budget, Paperwork Reduction Act (1004-0146) Washington, DC 20503, telephone (202) 395-7340.

*Title:* Timber Sale Export Restrictions, 43 CFR 5400.0-3

*OMB Approval Number:* (1004-0146)

*Abstract:* These forms are used by purchasers of the Bureau of Land Management timber sales to determine compliance with export restrictions.

*Bureau Form Number:* 5460-15

*Frequency:* Occasionally.

*Description of Respondents:* Individuals, companies and corporations that have purchased Bureau of Land Management timber sales.

*Estimated Completion Time:* One half hour per response.

*Annual Responses:* 300

*Annual Burden Hours:* 150

*Bureau Clearance Officer:* (Alternate) Rick Iovaine (202) 653-8853

Date: May 26, 1989.

Billy R. Templeton,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 89-14439 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-84-M

**National Park Service**

**Revision of Park Boundary; Manassas National Battlefield Park**

Whereas, Pub. L. 100-647, section 10002, dated November 10, 1988, and referred to as the "Manassas National Battlefield Park Amendments of 1988" requires the Secretary of the Interior to publish in the *Federal Register* a detailed description and map depicting the boundaries of the land acquired by Pub. L. 100-647 and included within the boundaries of Manassas National Battlefield Park;

Therefore pursuant to section 10002 of Pub. L. 100-647, notice is hereby given

that the boundary of Manassas National Battlefield Park has been revised to include the 566.77 acres, more or less, identified and described as all that certain tract or parcel of land lying and being situated in Prince William County, Virginia, and being more particularly described as the area which is south of the right-of-way line of U.S. Route 29, north of the right-of-way line of Route 705, and west of the right-of-way line of Route 622. The area included within the boundary is shown on map No. 379/80,023, which is on file and available for inspection in the office of the National Park Service, Department of the Interior. Copies may be obtained from the Land Resources Division, Mid-Atlantic Region, National Park Service, 143, South Third Street, Philadelphia, Pennsylvania 19106.

Date June 8, 1989.

Ronald N. Wrye,

Regional Director, National Capital Region.

[FR Doc. 89-11479 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-70-M

**INTERSTATE COMMERCE COMMISSION**

[Finance Docket No. 31478]

**Istra Corp.—Assignment of Lease and Interchange Agreement Exemption—Ogeechee Railway Co.**

Istra Corporation (Istra) and Ogeechee Railway Company (Ogeechee) filed a notice of exemption for the assignment to Ogeechee of a lease and related interchange agreement, as amended and clarified, between Istra and the Central of Georgia Railroad Company (CG) for the operation of two CG lines in Georgia. The lines are: (1) A 29.2-mile line between milepost W-57.5, at Dover, GA, and milepost W-86.7, at Metter, GA; and (2) a 21.1-mile line between milepost SA-57.5, at Sylvania, GA, and milepost SA-36.4, at Ardmore, GA. The lease between Istra and CG was authorized in Finance Docket No. 31449, *Istra Corporation—Lease and Operation Exemption—Central of Georgia Railroad Company* (not printed), served May 24, 1989. James E. Isbell, Sr., and Trac-Work, Inc., each own 50 percent of Istra. Istra in turn, owns 33.3 percent of Ogeechee, while James E. Isbell, Sr., and Trac-Work, Inc., own 44.4 percent.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The transaction will not result in adverse changes in service

levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any rail employees of Istra or Ogeechee who may be affected by the transaction will be protected pursuant to *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John M. Robinson, 9616 Old Spring Road, Kensington, MD 20895.

Date: June 9, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14373 Filed 6-16-89; 8:45 am]

BILLING CODE 7035-01-M

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

**Records Schedules; Availability and Request for Comments**

**AGENCY:** National Archives and Records Administration, Office of Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

**DATE:** Requests for copies must be received in writing on or before August 3, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESS:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

#### Schedules Pending

1. Defense Intelligence Agency, Directorate for Technical Services and Support (N1-373-89-6). Routine administrative support and logistics/engineering records.

2. Defense Nuclear Agency (N1-374-88-2). Facilitative Research and Development Life Cycle Management records. (Program planning files, R&D Project Case files and Test reports are retained as permanent records.)

3. Defense Nuclear Agency (N1-374-89-23). Routine training course announcements and printed training aids.

4. Defense Nuclear Agency (N1-374-89-24). Nonappropriated funds accounting files.

5. Department of Defense, Joint Staff (N1-218-89-2). Routine and facilitative electronic records and related printouts.

6. Department of Justice, Federal Bureau of Investigation (N1-65-89-3). The FBI schedule is classified in the interest of national security pursuant to Executive Order 12356.

7. Department of Justice, U.S. Marshals Service (N1-118-89-1). Special assignment files, 1968-71, consisting of summary accounts of expenses incurred by Deputy Marshals in carrying out special assignments in such areas as trial assistance, witness security, court security, and enforcement of court orders.

8. Executive Office of the President, Office of Administration (N1-364-88-1). Records of the U.S. Trade Representative. Comprehensive schedule providing for destruction of routine and facilitative records (policy documentation is permanent).

9. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Law Enforcement, headquarters and subordinate field offices (N1-436-88-4). Reduction in retention period for quarterly certification files and time and activity summary files relating to administratively uncontrollable overtime.

Dated: June 7, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-14412 Filed 6-16-89; 8:45 am]

BILLING CODE 7515-01-M

#### NATIONAL SCIENCE FOUNDATION

##### Permit Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permit issued.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

**SUPPLEMENTARY INFORMATION:** On April 24, 1989, the National Science Foundation published a notice in the *Federal Register* of a permit application received. A permit was issued to the following individual on June 9, 1989: Will Steger.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 89-14418 Filed 6-16-89; 8:45 am]

BILLING CODE 7555-01-M

#### NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-280 and 50-281]

##### Virginia Electric and Power Co.; 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-32 and DPR-37, issued to Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station, Units 1 and 2, located in Surry County, Virginia.

##### Environmental Assessment

###### Identification of Proposed Action

The proposed amendments would revise the provisions in the Technical Specifications (TS) by: (1) Raising the minimum requirement high level intake canal water level from 18 feet to 23 feet, (2) increasing the requirement from two to three emergency service water pumps to be operable with provisions for limited duration outages, and (3) providing operability and surveillance requirements for the new safety-related high level intake canal level actuation system.

The proposed action is in accordance with the licensee's application for amendment dated March 27, 1989.

###### The Need for the Proposed Action

The proposed changes to the TS are required to maintain a higher water level in the intake canal to ensure adequate flow through the component cooling water (CCW) system and other safety-related heat exchangers during accident conditions.

###### Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would require the licensee to raise the water level in the intake canal from 18 to 23 feet; require three emergency service

water pumps to be operable; and cause isolation of the main condenser and certain service water isolation valves upon receipt of a signal from the safety-related canal low level actuation system. The proposed revisions will also require operability and surveillance requirements for the new safety-related canal water level actuation system. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the TS involve systems which are not located within the restricted area as defined in 10 CFR Part 20. These changes do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the *Federal Register* on April 10, 1989 (54 FR 14303). No request for hearing or petition for leave to intervene was filed following this notice.

#### *Alternatives to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

#### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Surry Power Station, Units 1 and 2.

#### *Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

#### **Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated March 27, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 12th day of June 1989.

For the Nuclear Regulatory Commission.

Jan A. Norris,

*Acting Director, Project Directorate II-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-14456 Filed 6-16-89; 8:45 am]

BILLING CODE 7590-01-M

#### **Availability of Draft Technical Position on Tectonic Models in the Assessment of Performance of High-Level Radioactive Waste Repositories**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing the availability of the "Draft Technical Position on Tectonic Models in the Assessment of Performance of High-Level Radioactive Waste Repositories."

**DATE:** The comment period expires August 18, 1989.

**ADDRESSES:** Send comments to Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of this document may be obtained free of charge upon written request to Marlene Creviston, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 4-H-3, Washington, DC 20555, Telephone 1/800/368-5642, Ext. 20440.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Kalman, Project Manager, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Telephone 301/492-0428.

**SUPPLEMENTARY INFORMATION:** This Technical Position on tectonic models is undertaken to document the Division of High-Level Waste Management (DHLWM) staff's position on the requirement for the support and implementation of tectonic model(s) in performance allocation and performance assessment. The need for this Position stems from the DHLWM staff's concern about the use of models in performance allocation and performance assessment. In the Consultation Draft Site Characterization Plan and the Site Characterization Plan the U.S. Department of Energy (DOE) has indicated that it intends to use models in the performance assessment process. As a result, DOE is required, under 10 CFR Part 60 (§§ 60.21 and 60.101) to provide through support of those models. The objectives of this Position are to outline the regulatory requirements for support of tectonic models, to discuss the implementation of the requirements, and to suggest the process for integrating tectonic models into data collection activities of the site characterization program. Adherence to this Technical Position will result in use of tectonic models that are acceptable to the DHLWM staff and will help to assure the adequacy of the information provided in support of the License Application.

Dated at Rockville, Maryland, this 12th day of June 1989.

For the Nuclear Regulatory Commission.

John J. Lineham,

*Director, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 89-14455 Filed 6-16-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 72-6, 50-325/324]

#### **Carolina Power and Light Co.; Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Opportunity for a Hearing**

The Nuclear Regulatory Commission (the Commission) is considering an application dated April 27, 1989, for a materials license, under the provisions of 10 CFR Part 72, from Carolina Power and Light Company (CP&L or the applicant) to possess spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) located in Brunswick

County, North Carolina. If granted, the license will authorize the applicant to store spent fuel from-CP&L's H. B. Robinson Steam Electric Plant Unit No. 2 in a dry storage concrete module system at the applicant's Brunswick Steam Electric Plant site (Operating Licenses DPR-71 and 62). The fuel assemblies are presently stored in the Brunswick Steam Electric Plant Units 1 and 2 spent fuel pools. Pursuant to the provision of 10 CFR Part 72, the term of the license for the ISFSI would be twenty (20) years.

Prior to issuance of the requested license, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The issuance of the materials license will not be approved until the Commission has reviewed the proposal and has concluded that approval of the license and the amendments will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental evaluation, in accordance with 10 CFR Part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and Finding of No Significant Impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register**.

Pursuant to 10 CFR 2.105 and 2.1107, by July 19, 1989, the licensee may file a request for a hearing; and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the subject materials license in accordance with the provisions of 10 CFR 2.714. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the Commission may, upon satisfactory completion of all evaluations, issue the materials license without further prior notice.

A petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the

results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene and should identify whether such aspect relates to the requested materials license or to the proposed reactor license amendments. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without prior approval of the presiding officer at any time up to 15 days prior to the holding of the first prehearing conference, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard E. Cunningham, Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards:

Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Mr. R. E. Jones, General Counsel, Carolina Power and Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Commission hereby provides notice that this proceeding concerns an application for a license falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of NWPA, the Commission, at the request of any petitioner or any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors," (published at 50 FR 41662, October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, subpart G continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of

contentions.) The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, subpart G apply.

For further details with respect to this action, see the application dated April 27, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at the William Madison Randall Library, University of North Carolina, 601 S. College Road, Wilmington, North Carolina 28403-3297. The Commission's license and Safety Evaluation Report, when issued, may be inspected at the above locations.

Dated at Rockville, Maryland, this 13th day of June.

For the Nuclear Regulatory Commission,  
Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety.

[FR Doc. 89-14457 Filed 6-16-89; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, July 12, 1989  
Wednesday, July 19, 1989  
Wednesday, July 26, 1989  
Wednesday, August 2, 1989  
Wednesday, August 9, 1989

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions

holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632-9710.

Thomas E. Anfinson,  
Chairman, Federal Prevailing Rate Advisory  
Committee.

June 12, 1989.

[FR Doc. 89-14414, Filed 6-16-89; 8:45 am]

BILLING CODE 6325-01-M

## PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

### Board of Directors Meeting

**AGENCY:** Pennsylvania Avenue Development Corporation.

**ACTION:** The Pennsylvania Avenue Development Corporation announces a forthcoming meeting of the Board of Directors.

**DATE:** The meeting will be held Wednesday, June 21, 1989, at 10:00 a.m.

**ADDRESS:** The meeting will be held at the PADC Conference Room, 1331 Pennsylvania Avenue, NW., Suite 1220 North, Washington, DC.

**SUPPLEMENTARY INFORMATION:** This meeting is held in accordance with 36 Code of Regulations Part 901, and is open to the public.

Dated: June 9, 1989.

M.J. Brodie,

Executive Director.

[FR Doc. 89-14444 Filed 6-16-89; 8:45 am]

BILLING CODE 7603-01-M

## PENSION BENEFIT GUARANTY CORPORATION

### Request for OMB Approval of Collection of Information; Schedule A to Form 1

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of collection of information submitted for OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation ("PBGC") has requested approval by the Office of Management and Budget ("OMB") of a revised Schedule A to the PBGC Form 1, Annual Premium Payment. (The Form 1 and Schedule A together with the Form 1-ES (used for estimated premium payments by large plans) and instructions comprise the PBGC "Premium Payment Package".) The Schedule A is used by single-employer plans to calculate the variable rate portion of the PBGC premium. In order to be able to issue the revised Schedule A in time for 1989 premium payments, the PBGC has requested expedited review by OMB, pursuant to 5 CFR § 1320.18. As part of the expedited review process, the PBGC is hereby publishing the revised Schedule A and instructions for public comment. To facilitate the public's review of the Schedule A, the PBGC is publishing the entire Premium Payment Package, although there are no substantive

changes in either the Form 1-ES or the Form 1 from their 1988 versions. Both the Form 1-ES and Form 1 have been approved by OMB through May 31, 1991.

**DATES:** Comment must be submitted on or before June 29, 1989. Comments received after the deadline will be considered by the PBGC in preparing the 1990 Schedule A.

**ADDRESSES:** All written comments (at least three copies) should be addressed

to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503, with a copy to the Pension Benefit Guaranty Corporation, Office of the General Counsel (Code 22500) 2020 K Street, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Ronald Goldstein, Senior Counsel,

Office of the General Counsel (Code 22510), 2020 K Street, NW., Washington, DC 20006; telephone (202) 778-8850 (202-778-8859 for TTY and TDD) (not toll-free numbers).

Issued at Washington, DC, this 13th day of June 1989.

**Kathleen P. Utgoff,**  
*Executive Director.*

**BILLING CODE 7708-01-M**

PBGC Form 1

Pension Benefit Guaranty Corporation

1989

Annual Premium Payment

For Plan Years Beginning in Calendar Year 1989

See the 1989 Premium Payment Package for the Instructions for Form 1

Approved OMB 1212-0009 Expires 5/31/91 For PBGC Use Only

1. Plan Sponsor Check for Address Change

(a) Name \_\_\_\_\_

(b) Address \_\_\_\_\_

(c) City \_\_\_\_\_ (d) State \_\_\_\_\_ (e) Zip \_\_\_\_\_

2. Plan Administrator

(a) Name \_\_\_\_\_

(b) Address \_\_\_\_\_

(c) City \_\_\_\_\_ (d) State \_\_\_\_\_ (e) Zip \_\_\_\_\_

3. Plan Sponsor's Employer Identification Number (EIN) Plan Number (PN)

(a)           (b)

Enter 9 Digit EIN Enter 3 digit PN

(c) Does EIN/PN match entry on 1988 Form 5500? Yes  No  If no, attach explanation.

4. If either the EIN or PN in item 3 is NOT the same as on prior premium filing, enter both prior EIN and prior PN.

(a)           (b)

Enter 9 Digit EIN Enter 3 digit PN

(c)  EIN/PN Change or (d)  Change Due to Merger

(e)  Effective Date (Month/Day/Year)

5. Coverage Status (Check only one)

(a)  Covered

(b)  Uncertain (If uncertain you must file. See instructions.)

6. Filing Status (Check any applicable)

(a) First plan filing  Yes  No

(b) Terminated plan  Yes  No

If yes, enter applicable month/day/year of:

(1) Date assets distributed

(2) Date trustee appointed under ERISA section 4042

7. Plan Date

Month Day Year

8. Industry Code

Enter 4 digits

9. Name of Plan \_\_\_\_\_

10. Name and telephone number of plan contact

(a) Name \_\_\_\_\_

(b) Area Code and phone number \_\_\_\_\_

11. Plan type: (Check appropriate box to indicate type of plan and type of filing.)

(a)  Multiemployer Plan (b)  Single-Employer Plan (includes Multiple Employer Plan)

12. This premium is for the plan year beginning (Month/Day/Year)

If the plan year has changed since last filing with PBGC, check here

13. Enter PARTICIPANT COUNT for plan year specified in Line 12  13

(If this count does not equal the count on your 1988 Form 5500, enter the count from your 1988 Form 5500. \_\_\_\_\_ )

14. MULTIEMPLOYER plans: Multiply line 13 by the \$2.60 premium rate and enter amount  14

15. SINGLE-EMPLOYER plans: Compute your premium as indicated below.

(a) Flat rate portion: Multiply the participant count on line 13 by \$16  15a

(b) Variable rate portion: From Schedule A, line 9  15b

(c) Total Premium: Add lines 15(a) and 15(b). Enter amount  15c

16. Enter premium amount previously paid for this premium payment year (including any amount for which you claimed a credit on line 18 of your 1988 Form 1)  16

17. Enter net amount of premium due. If amount on line 14 or 15(c) is larger than the amount paid on line 15, subtract line 16 from line 14 or 15(c) and enter amount due on line 17  17

Enter amount of check payable to Pension Benefit Guaranty Corporation: \_\_\_\_\_ \$ \_\_\_\_\_

Mail Form 1 and check to: Pension Benefit Guaranty Corporation, P.O. Box 105655, Atlanta, GA 30348-5655

Note: Each plan requires a separate Form 1 and a separate check. Put the EIN/PN shown in item 3 on the check. (For delivery services requiring street address, see Part D1 of instructions.)

18. Overpayment. If amount on line 16 is larger than the amount on line 14 or 15(c), enter amount of overpayment: \_\_\_\_\_ \$ \_\_\_\_\_

Do you want overpayment refunded to you or credited against next year's premium? Check one:  refund  credit.

19. If you have any attachments, other than Schedule A, check here:  Put plan name (item 9) and EIN/PN (item 3) on each sheet.

20. Multiemployer Plan Declaration (Single-Employer plans refer to Schedule A): Under penalties of perjury (18 U.S.C. 1001), I declare that I have examined this filing, and to the best of my knowledge and belief it is true, correct and complete.

Signature of Multiemployer Plan Administrator

Date

**SCHEDULE A**  
(PBG Form 1)  
1989

**Single-Employer Plan**  
**Variable Rate Portion of the Premium**

Approved OMB 1212-  
Expires

(See Part H for General Instructions and Part I for Line-By-Line Instructions)

EIN/PN From: (a) Form 1 Line 3:  /  (b) 1988 Form 5500:  /

Plan Name: \_\_\_\_\_

**Section One. Filing Method.** All Single-Employer plans *must* complete this section.

- 1. Filing Method:** Check only one box. See Section Four for required certifications.
- (a)  **General Rule:** (Enrolled Actuary must certify on line 11.)
    - (1) Enter date as of which Unfunded Vested Benefits were determined (month/day/year) ..... ( / / )
    - (2) If you used the special accrued benefits rule for plans with 500 or more participants for line 2(a), check here . Go to line 2.
  - (b)  **Alternative Calculation Method:** Check a box and go to line 2.
    - (1)  Plans with fewer than 500 Participants.
    - (2)  Plans with 500 or more Participants. (Enrolled Actuary must certify on line 11.)
  - (c)  **Plans Not Required To Determine Unfunded Vested Benefits:** Check a box and go to line 9 and enter \$0.
    - (1)  No Vested Participants. (Plan Administrator must initial line 10(a).)
    - (2)  412(i) Plans. (Plan Administrator must initial line 10(b).)
    - (3)  Fully Funded Plans with fewer than 500 Participants. (Enrolled Actuary must certify on line 11.)
    - (4)  Plans Terminating in Standard Terminations with a pre-1989 Plan Year proposed termination date:  
Enter termination date (month/day/year): ..... ( / / )
  - (d)  **Plans Terminating in Distress or Involuntary Termination with a pre-1989 Plan Year termination date:**  
Enter termination date (month/day/year): ..... ( / / )  
(Enrolled Actuary must certify on line 11 if the plan has 500 or more participants.) Go to line 2.

**Section Two. Unfunded Vested Benefits.** Complete this section if you checked line 1(a), 1(b) or 1(d).

- 2. Present Value of Vested Benefits:**
- Plan values are determined as of (month/day/year) \_\_\_\_/\_\_\_\_/\_\_\_\_.  
The assumed retirement age is \_\_\_\_ years. The adjusted values are based on a Required Interest Rate of \_\_\_\_ % and an accrual factor of \_\_\_\_.
- |   | (a) Plan Vested Benefits Value | Interest Rate        | (b) Adjusted Value of Vested Benefits |
|---|--------------------------------|----------------------|---------------------------------------|
| (1) Retirees and beneficiaries receiving payments ..... | \$ _____                       | _____ %              | \$ _____                              |
| (2) Participants <i>not</i> receiving payments .....    | \$ _____                       | _____ %              | \$ _____                              |
| (3) Total (line (1) plus line (2)) .....                | \$ _____                       | //////////////////// | \$ _____                              |
- 3. Value of Plan Assets:**
- (a) Enter value of plan assets as of (month/day/year): \_\_\_\_/\_\_\_\_/\_\_\_\_ ..... \$ \_\_\_\_\_
  - (b) Enter contribution receivables included in line 3(a) ..... \$ \_\_\_\_\_
  - (c) Discounted paid contributions.  
(Note: For plans with fewer than 500 participants, this line is optional; you may go to line 3(d)) ..... \$ \_\_\_\_\_
  - (d) Enter adjusted value of plan assets (line 3(a) minus line 3(b) plus line 3(c)) ..... \$ \_\_\_\_\_
- 4. Adjusted Unfunded Vested Benefits:**  
Enter adjusted unfunded vested benefits. (If line 4 is \$0, go to line 9; if not, go to line 5) ..... \$ \_\_\_\_\_
- 5. Multiply line 4 by 0.006 and enter** ..... \$ \_\_\_\_\_
- 6. Divide line 5 by the participant count from Form 1 line 13 (enter count: \_\_\_\_\_)** ..... \$ \_\_\_\_\_
- 7. Enter the \$34 standard per participant cap or, if qualified, a reduced cap as low as \$19** ..... \$ \_\_\_\_\_
- 8. Enter the lesser of the amounts on line 6 or 7** ..... \$ \_\_\_\_\_

**Section Three. Variable Rate Portion Of The Premium.** All Single-Employer plans *must* complete this section.

- 9. Enter here and on Form 1 line 15(b) either:**
- (a) Line 8 multiplied by the participant count from Form 1 line 13 (enter count: \_\_\_\_\_) or,
  - (b) If any box on line 1(c) was checked or if line 4 was \$0, enter \$0 ..... \$ \_\_\_\_\_

SCHEDULE A  
(PBGC Form 1)  
1989

EIN/PN from Form 1 Line 3:           /

Page 2

Section Four. Certifications

10. Certification of Plan Administrator. All single-employer plan administrators *must* sign and complete this line. In addition initial, do not check, box (a), (b) or (c) if applicable.

I certify, under penalties of perjury (18 U.S.C. 1001), that I have examined the completed PBGC Form 1 and Schedule A and to the best of my knowledge and belief, the form, the schedule and this certificate are in conformance with the premium regulation and instructions, complete and accurate, and any information I made available to the enrolled actuary is true, correct and complete, and further that:

- (a)  no participant was entitled to a vested benefit under the plan (by its terms or as required by law) as of the last day of the preceding plan year (or if this is a new or newly covered plan, as of the first day of the premium payment year).  
(Initials)
- (b)  the plan was a plan described in section 412(i) of the Internal Revenue Code and regulations thereunder at all times during the preceding plan year (or if this is a new or newly covered plan, as of the first day of the premium payment year).  
(Initials)
- (c)  the adjusted value of vested benefits on line 2(b) is the same as the plan value of vested benefits entered on line 2(a) because the plan interest rates used to value the vested benefits entered on lines 2(a)(1) and 2(a)(2) were equal to or less than the Required Interest Rate.  
(Initials)

Signature of Single-Employer Plan Administrator

Date

11. Certification of Enrolled Actuary. If the box on line 1(a) is checked, sign and complete this line and initial boxes (a), (c) or (d) below if applicable. If the box on line 1(b)(1) is checked, sign and complete this line only if box(d) is applicable and initial box (d). If the box on line 1(b)(2) is checked, sign and complete this line and initial box (e) below and, if applicable, box (d) below. If the box on line 1(c)(3) is checked, sign and complete this line and initial box (b). If the box on line 1(d) is checked and the plan has 500 or more participants, sign and complete this line and initial box (e). *Initial, do not check, the applicable box.*

I certify, under penalties of perjury (18 U.S.C. 1001), that I have examined the completed PBGC Form 1 and Schedule A and to the best of my knowledge and belief, the form, the schedule and this certificate are in conformance with the premium regulation and instructions, complete and accurate, and any information I made available to the plan administrator is true, correct and complete, and further that:

- (a)  the plan had 500 or more participants as of the last day of the preceding plan year (or if this is a new or newly covered plan, as of the first day of the premium payment year); the actuarial value of plan assets equals or exceeds the value of all accrued benefits under the plan (valued at the Required Interest Rate) and the entry on line 2(a) is the present value of accrued benefits.  
(Initials)
- (b)  the plan had no unfunded vested benefits and fewer than 500 participants both as of the last day of the preceding plan year (or if this is a new or newly covered plan, as of the first day of the premium payment year).  
(Initials)
- (c)  the adjusted value of vested benefits on line 2(b) is the same as the plan value of vested benefits entered on line 2(a), Schedule A, because the plan interest rates used to value the vested benefits entered on lines 2(a)(1) and 2(a)(2) were equal to or less than the Required Interest Rate.  
(Initials)
- (d)  the plan meets the requirements of the special rule for a nonprofit entity for purposes of computing the adjusted per participant cap entered on line 7 of Schedule A.  
(Initials)
- (e)  The adjusted unfunded vested benefits reported on Schedule A reflect, in a manner consistent with generally accepted actuarial principles and practices, the occurrence, if any, of any of the significant events described in the premium regulation and instructions. (Note: if you initial this box, you must complete the following information.)
  - (1) Check each significant event that occurred between the determination date entered on line 2 of this Schedule A and the last day of the plan year preceding the premium payment year (see Part H6 of instructions for definitions):  
S.E.(1)  S.E.(2)  S.E.(3)  S.E.(4)  S.E.(5)  S.E.(6)  S.E.(7)  No Significant Event occurred
  - (2) Total amount included in line 4 due to significant events  
(if negative, place in parentheses): ..... \$ \_\_\_\_\_

Signature of Enrolled Actuary

Date

Print or Type Name of Enrolled Actuary

Enrollment number

Address (number and street)

City, State and ZIP code



## 1989 Premium Payment Package

### Pension Benefit Guaranty Corporation

#### How To Complete PBGC Premium Payment Forms

#### PAPERWORK REDUCTION ACT NOTICE -

We need this information to determine the amount of premium due to the PBGC under Title IV of ERISA. You are required to give us this information. Confidentiality is that supplied by the Privacy Act and the Freedom of Information Act.

The estimated times needed to complete and file the Form 1-ES the Form 1 and, for single-employer plans, Schedule A are listed below. These times are averages for the plans in each of the listed categories. These times will vary depending on the circumstances of a given plan. Because these times include time for the preparer to familiarize himself or herself with the forms and instructions, the PBGC expects the average times to decrease in future premium payment years.

FORM AND PLAN TYPE		AVERAGE TIME
<b>Form 1-ES</b>		
Single-Employer Plans	10,000 plans	0.5 hour
Multiemployer Plans	1,080 plans	0.5 hour
<b>Form 1 and Schedule A</b>		
<b>Single-Employer Plans</b>		
Plans with Under 100 Participants		
Fully funded	68,000 plans	1.0 hour
Underfunded	17,000 plans	2.0 hours
Plans with 100 or More Participants		
Fully funded	20,000 plans	1.0 hour
Underfunded	5,000 plans	
- Using General Rule or ACM with Significant Events		10.9 hours
- Using ACM - no Significant Events		2.4 hours
Multiemployer Plans	2,400 plans	0.5 hour

If you have comments concerning the accuracy of these time estimates or suggestions for making the forms simpler, please send your comments to Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K Street, NW, Washington, DC 20006-1806 and Office of Management and Budget, OIRA, Attention Desk Officer - PBGC, 3208 New Executive Office Building, Washington, DC 20503.

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#### Part A INTRODUCTION

### 1. What Are PBGC Form 1 And Form 1-ES?

The Form 1 (including Schedule A to Form 1) and Form 1-ES are forms used to pay premiums to the Pension Benefit Guaranty Corporation (PBGC) as required by sections 4006 and 4007 of the Employee Retirement Income Security Act, as amended (ERISA) and the PBGC's Payment of Premiums regulation (29 CFR Part 2610).

The Form 1-ES is used by all plans that reported 500 or more participants on their 1988 PBGC Form 1 to make their initial 1989 premium payments (only the flat rate portion of the premium for single-employer plans) and permits the initial premium calculation to be based on an estimated participant count. These plans use the Form 1 to make a subsequent reconciliation filing and, for single-employer plans, to pay the variable rate portion of the premium, both based on an actual participant count. (Note: If all the information needed to file Form 1 is known before the First Filing Due Date, you should file a Form 1 instead of a Form 1-ES. If you file a Form 1-ES, you will still be required to file a Form 1 by the Final Filing Due Date.) Plans with fewer than 500 participants file the Form 1 only, with their total premium payment, by the Final Filing Due Date.

It is the responsibility of the plan administrator to obtain and complete the PBGC Form 1 and Form 1-ES, as applicable, and make the premium payment each year. The PBGC will permit the use of re-typed or other facsimile forms. However, any such forms must present the same information in the same location as on the PBGC forms. (Any signatures or initials required from the plan administrator or enrolled actuary must be filed in original form.) The instructions in this pamphlet describe how to complete Form 1 and Form 1-ES and make the premium payment due.

### 2. Definitions

In these instructions-

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001, et seq.).

"Code" means the Internal Revenue Code of 1986, as amended.

"First Filing Due Date" means the last day of the 2nd full calendar month following the close of the preceding plan year, except that, in the case of plans changing plan years, it is the later of the last day of the 2nd full calendar month following the close of the preceding plan year or 30 days following the date on which a plan amendment was adopted changing the plan year. See Part C for plans that must file a Form 1-ES on a "First Filing Due Date".

"Final Filing Due Date" means the 15th day of the 8th full calendar month following the month in which the plan year began except:

a. In the case of plans filing for the first time it is the latest of the following dates-

(i) the 15th day of the 8th full calendar month following the month in which the plan year began, or if

later, in which the plan became effective for benefit accruals for future service,

(ii) 90 days after the date of the plan's adoption,

(iii) 90 days after the date on which the plan became covered under ERISA section 4021.

b. In the case of plans changing plan years, it is the later of the 15th day of the 8th full calendar month following the month in which the plan year began, or 30 days after the date on which a plan amendment was adopted changing the plan year.

See Part C for plans that must file a Form 1 on a "Final Filing Due Date".

"Filing Due Date" means either of the filing dates defined above.

"Form 1" means the Annual Premium Payment Form 1 issued by the PBGC and includes, for single-employer plans, the Schedule A.

"Form 1-ES" means the Estimated Premium Payment Form 1-ES issued by the PBGC for estimating the flat rate portion of the premium for single-employer plans and the total premiums for multiemployer plans.

"Schedule A" means the schedule to the Form 1 which is used by single-employer plans only to calculate unfunded vested benefits and compute the variable rate portion of the premium.

"Flat rate portion of the premium" means the portion of the single-employer premium determined by multiplying the flat rate premium charge by the number of participants in the plan on the last day of the preceding plan year or, for a new or newly covered plan, the first day of the current plan year. The flat rate charge for single-employer plans for plan years beginning in 1988 or later is \$16 per participant.

"Variable rate portion of the premium" means the portion of the single-employer premium based on a plan's unfunded vested benefits and determined by multiplying the variable rate charge by the number of plan participants. The variable rate charge is \$6 for every \$1,000 (or fraction thereof) of unfunded vested benefits, with that product divided by the number of plan participants. The variable rate charge is subject to a cap of, generally, \$34 per participant.

"Premium payment year" means the plan year for which the premium is being paid.

"Premium regulation" means the PBGC's regulation on Payment of Premiums (29 CFR Part 2610). The Form 1-ES and Form 1 and these instructions are issued under and implement the premium regulation.

"Form 5500 series" means Form 5500, 5500C, and 5500R, Annual Return/Report of Employee Benefit Plan, jointly developed by the Internal Revenue Service, the Department of Labor and The PBGC (Copies of this form may be obtained from the Department of Labor or the Internal Revenue Service.)

"We" or "us" means the Pension Benefit Guaranty Corporation.

"You" or "your" means the administrator of a pension plan.

"Plan administrator" means: (a) the person specifically so designated by the terms of the instrument under which the plan is operated; or (b) if an administrator is not so designated, the plan sponsor.

"EIN" means Employer Identification Number. It is always a 9-digit number assigned by the Internal Revenue Service for income tax purposes.

"PN" means Plan Number. This is always a 3-digit number. The plan sponsor assigns this number to distinguish among employee benefit plans established or maintained by the same plan sponsor. A plan sponsor usually starts

numbering pension plans at "001" and uses consecutive Plan Numbers for each additional plan. Once a PN is assigned, always use it to identify the same plan. If a plan is terminated, retire the PN - do not use it for another plan.

### 3. Recordkeeping Requirements; PBGC Audits

For plans years beginning on or after January 1, 1988, plan administrators are required to retain all plan records that are necessary to support or validate PBGC premium payments. The records must include calculations and other data prepared by the plan's actuary or, for a plan described in section 412(j) of the Internal Revenue Code, by the insurer from which the insurance contracts are purchased. The records are to be kept for six years after the premium due date.

Records that must be retained include, but are not limited to, records that establish the number of plan participants, that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based, and, for plans that assert entitlement to the reduction in the cap on the variable rate portion of the premium, that demonstrates the methods and assumptions used by the plan during the base period with respect to calculating its maximum deductible contribution pursuant to section 404 of the Code. Records retained pursuant to this paragraph must be made available to the PBGC upon request for inspection and photocopying.

The PBGC may audit any premium payment. If PBGC determines upon audit that the full amount of the premium due was not paid, late payment interest charges under §2610.7 of the premium regulation and the late payment penalty charges under §2610.8 of the premium regulation shall apply to the unpaid balance from the premium due date to the date of payment. If, in the judgment of the PBGC, the plan's records fail to establish the number of participants with respect to whom premiums were required for any premium payment year, the PBGC may rely on data it obtains from other sources (including the Internal Revenue Service and the Department of Labor) for presumptively establishing the number of plan participants for premium computation purposes. Similarly, if, in the PBGC's judgment, the plan's records fail to establish that the unfunded vested benefits were the amount reported in the premium filing, the variable rate portion of the premium owed with respect to that premium payment may be deemed to be the maximum \$34 per participant charge.

## Part B WHO MUST FILE

### 1. General Rule

The plan administrator of each single-employer plan and multiemployer plan covered under section 4021 of ERISA is required annually to file the Form 1 and, if applicable, Form 1-ES and pay the premium due. If you are uncertain whether your plan is covered under section 4021, you should request a coverage determination by writing to us at the address shown in Part D. A request for a coverage determination does not extend the due date for any premium that is finally determined to be due. If we determine that the plan is not a covered plan, we will refund any premium paid.

## 2. Terminating Plans

a. **Obligation To File.** The obligation to file the PBGC Form 1-ES and Form 1 and make the required premium payments continues until the end of the plan year in which either -

- (i) the plan's assets are distributed in accordance with section 4041(b) of ERISA governing standard terminations (and distress terminations with assets sufficient to pay guaranteed benefits) or section 4041A of ERISA governing multiemployer plan terminations, or
- (ii) a trustee, generally the PBGC, is appointed for a terminating plan under ERISA section 4042.

b. **Refunds.** Any required premium payments are for a full plan year. You may not prorate the premium for the plan's final (short) plan year. However, you may request a refund for that plan year. The PBGC will determine the amount of the refund by prorating the premium for the short plan year on a monthly basis (treating a part of a month as a full month). For this purpose, the PBGC will treat the short plan year as ending -

- (i) where a single-employer plan's assets are distributed in accordance with section 4041(b)(3) of ERISA (for either a standard or distress termination), the later of:

(A) the asset distribution date; or

(B) 30 days prior to the date the PBGC receives the plan's post-distribution certification.

- (ii) where a multiemployer plan's assets are distributed in accordance with section 4041A of ERISA, the asset distribution date; or

(iii) where a trustee is appointed under ERISA section 4042, the date of appointment.

To request a refund, write separately to the address shown in Part D, Item 2. Enclose a copy of the Form 1 that you filed. We will calculate the amount of your refund.

If a plan terminates and a new plan is established, premiums are due for the terminated plan as described above, and premiums are also due for the new plan from the first day of its first plan year (see Part C, Item 2).

**Example 1** A plan with a plan year beginning January 1, 1988, and ending December 31, 1988, terminates in a standard termination on September 30, 1988. On April 7, 1989, all assets are distributed and the PBGC is notified within 30 days. Since the terminating plan is sufficient to pay all benefit liabilities, no trusteeship is involved. The plan administrator must file and make the premium payments for the 1988 plan year and for the 1989 plan year. However, the plan administrator may request a refund for the short 1989 plan year, January 1, 1989 - April 7, 1989. A refund will be made for the period of May - December 1989.

**Example 2** A plan with a plan year beginning July 1, 1988 and ending on June 30, 1989, terminates in a distress termination on April 29, 1989. On July 31, 1989, a trustee is appointed to administer the plan under ERISA section 4042. This plan is required to file and make premium payments for both the 1988 and 1989 plan years, because a trustee was not appointed until after the beginning of the 1989 plan year. However, the plan administrator may request a refund for the short 1989 plan year, July 1, 1989 - July 31, 1989. A refund will be made for the period of August 1989 - June 1990.

## Part C WHEN TO FILE

### 1. General Rule

The table below shows the filing due dates for the 1989 premium payment year.

Premium Payment Year Begins	Filing Due Dates		Form 1 Filing Due Date
	Form 1-ES Due Date		
	By Day of Month	Plan Year Begins	
	1st Day	2nd-End	
Jan 1989	02/28/89	03/31/89	09/15/89
Feb 1989	03/31/89	05/01/89	10/16/89
Mar 1989	05/01/89	05/31/89	11/15/89
Apr 1989	05/31/89	06/30/89	12/15/89
May 1989	06/30/89	07/31/89	01/16/90
Jun 1989	07/31/89	08/31/89	02/15/90
Jul 1989	08/31/89	10/02/89	03/15/90
Aug 1989	10/02/89	10/31/89	04/16/90
Sep 1989	10/31/89	11/30/89	05/15/90
Oct 1989	11/30/89	01/02/90	06/15/90
Nov 1989	01/02/90	01/31/90	07/16/90
Dec 1989	01/31/90	02/28/90	08/15/90

Your due date for filing the Form 1 and, if applicable, Form 1-ES and paying the premium owed depends on the number of plan participants as of the last day of the second plan year preceding the premium payment year. This number is the participant count required to be reported on the Form 1 for the plan year preceding the year for which you make the filing (i.e., for 1989 premiums, the participant count on the 1988 Form 1). **NOTE:** The participant count date for purposes of determining your Filing Due Date is different from the participant count date used for computing the premium (see Part G).

Plans that were required to report 500 or more participants on the preceding year's Form 1 must generally file a Form 1-ES by the last day of the second full calendar month following the close of the preceding plan year ("First Filing Due Date") and a Form 1 by the 15th day of the eighth full calendar month following the month in which the plan year began ("Final Filing Due Date"). For single-employer plans, only the flat rate portion of the premium is due by the First Filing Due Date; the variable rate portion is due by the Final Filing Due Date. For multiemployer plans, the entire premium is due by the First Filing Due Date.

Plans that reported fewer than 500 participants on the preceding year's Form 1 are required to file the Form 1 and pay the entire premium due by the 15th day of the 8th full calendar month following the month in which the plan year began.

The premium owed for a plan year is based on the number of plan participants as of the last day of the preceding plan year. However, plans may not have an accurate participant count before the First Filing Due Date. For this reason, the Form 1-ES permits plans to compute the amount owed on the basis of an estimated participant count. However, we remind you that for plans with 500 or more participants, the total flat rate portion of the premium, in the case of a single-employer plan, or the entire premium, in the case of a multiemployer plan, is due by the First Filing Due Date. If the full amount due is not paid by that date, the

plan will be subject to late payment interest and penalty charges (see Part F).

You may avoid a late payment penalty charge (but not the interest) (see Part F) for the flat rate portion of the premium if you do two things:

a. First, you must pay 100 percent of the premium amount due on the plan's Final Filing Due Date for the \$16 per participant flat rate portion of the single-employer premium or the \$2.60 per participant multiemployer total premium; and

b. Second, the premium based on an estimated participant count that you pay with the Form 1-ES by the First Filing Due Date must equal at least the lesser of:

(i) 90 percent of the premium amount due on the plan's Final Due Date for the \$16 per participant flat rate portion of the single-employer premium or the \$2.60 per participant multiemployer premium, or

(ii) an amount equal to the participant count for the PBGC Form 1 for the year before this premium payment year multiplied by \$16 for single-employer plans and \$2.60 for multiemployer plans.

If you have an accurate participant count by the First Filing Due Date, you should pay the amount owed by that date. If you do this, you will avoid the interest and penalty charges. If you have all the information needed to file Form 1 on or before the First Filing Due Date, you should file a Form 1. If you file a Form 1-ES, you will still be required to file a Form 1 by the Final Filing Due Date. (A single-employer plan that files a Form 1 with its first payment but does not include the variable rate portion of the premium, will have to file another Form 1, identified as an "Amended Filing," with that payment by the Final Filing Due Date.)

## 2. Plans Filing For The First Time

a. First Filing Due Date. New and newly covered plans are not required to pay an estimated premium by a First Filing Due Date.

b. Final Filing Due Date. For all new and newly covered plans, regardless of the number of plan participants, that have NOT previously been required to file a Form 1 and pay premiums to us, the Final Filing Due Date is the latest of the following dates:

(i) the 15th day of the 8th full calendar month following the month in which the plan year began, or if later, following the month in which the plan first became effective for benefit accruals for future service (see Examples 1 and 2),

(ii) 90 days after the date of the plan's adoption (see Example 3), or

(iii) 90 days after the date on which the plan became covered under ERISA section 4021 (see Example 4).

c. Refunds. Any required premium payments are for a full plan year. Thus, you must pay a full year's premium payment for the plan's first plan year, even if it is a short plan year (e.g., a new plan maintained on a calendar year basis becomes effective for benefit accruals for future service on July 1, 1989). However, you may request a refund for the plan's first (short) plan year by writing separately to the address shown in Part D, Item 2. Enclose a copy of the Form 1 that you filed. We will calculate the amount of the refund by prorating the premium for the short plan year on a monthly basis (treating a part of a month as a full month.)

**Example 1** A new plan has a plan year beginning January 1, 1989, and ending December 31, 1989. The plan was adopted October 1, 1988, and became effective for benefit accruals January 1, 1989. The Final Filing Due Date is September 15, 1989.

**Example 2** A new plan is adopted on December 1, 1989, and has a July 1 - June 30 plan year. The plan became effective for benefit accruals for future service on December 1, 1989. The Final Filing Due Date for the plan's first year, July 1, 1989, through June 30, 1990, is August 15, 1990. The plan owes a premium for all of 1989, and may request a refund for the period of December 1989 through June 1990.

**Example 3** A new plan has a plan year beginning January 1, 1989, and ending December 31, 1989. The plan was adopted on September 14, 1989, with a retroactive effective date of January 1, 1989. The Final Filing Due Date is December 13, 1989.

**Example 4** A professional service employer maintains a plan with a plan year beginning on January 1, 1989, and ending December 31, 1989. If this type of plan has always had fewer than 25 participants it is not a covered plan under ERISA section 4021. On October 14, 1989, the plan, which always had under 25 participants, now has 26 participants. It is now a covered plan and will continue to be a covered plan regardless of the plan's future participant count. The Final Filing Due Date is January 12, 1990.

## 3. Plans Filing For the Second Time

The due date rules for plans filing for their second (or second covered) plan year are the same as the General Rule under Item 1, with one exception. For these plans, the determination of whether the plan has 500 or more participants is made as of the first day of the preceding plan year, i.e., the first day of the plan's first (or first covered) plan year. For plans in their second premium payment year, this is the participant count required to be reported on the preceding year's Form 1.

**Example 1** A single-employer plan has a plan year beginning on July 1st and ending on June 30th. It had a participant count of 950 as of the first day of its first year, July 1, 1988. The First Filing Due Date for the plan's 1989 (its second) plan year is August 31, 1989, and the plan must generally file a Form 1-ES by that date, using an estimated participant count for determining the flat rate portion of the premium. The plan must file its Form 1 and pay any outstanding balance of the flat rate portion of the premium plus the variable rate portion by the Final Filing Due Date, which is March 15, 1990.

**Example 2** A multiemployer plan has a plan year beginning on July 15th and ending on July 14th. It had a participant count of 1,500 as of the first day of the plan's first year, July 15, 1988. The First Filing Due Date for the plan's 1989 (its second) plan year is October 2, 1989, and the plan must generally file a Form 1-ES on that date, using an estimated participant count for determining the amount of the premium. The plan must make a final, reconciliation filing on Form 1 by the Final Filing Due Date, which is March 15, 1990.

**Example 3** A plan had a participant count of 300 as of the first day of the plan's first year. This plan has a plan year beginning on April 1st and ending on March 31st. For the plan year beginning April 1, 1989 (its second plan year), the plan must file Form 1 by the Final Filing Due Date, which is December 15, 1989.

#### 4. Plans Changing Plan Years

a. Due Dates. Plans that change their plan year as the result of a plan amendment must, for the short plan year, follow the due date rules described in Items 1, 2, and 3 above, as applicable.

(i) For the plan year following the short plan year, the First Filing Due Date is the later of:

(A) the last day of the second full calendar month following the close of the short plan year, or

(B) 30 days after the date on which the plan amendment changing the plan year is adopted.

(ii) For the plan year following the short plan year, the Final Filing Due Date is the later of:

(A) the 15th day of the 8th full calendar month following the month in which the plan year begins, or

(B) 30 days after the date on which the plan amendment changing the plan year is adopted.

b. Refunds. Each plan year's premium filing(s) and payment(s) must reflect and be based on a full 12-month plan year. You may not prorate the premium for the short plan year. When a change in plan year resulting from a plan amendment results in a duplicate or overlapping premium payment, you may request a refund. To request a refund, write separately to the address shown in Part D, Item 2. Enclose copies of the relevant Form 1s that you filed. We will then calculate the amount of your refund by prorating the premium for the short plan year on a monthly basis (treating a part of a month as a full month).

**Example 1** By plan amendment adopted on December 1, 1988, a plan changes from a plan year beginning January 1 to a plan year beginning June 1. This results in a short plan year beginning January 1, 1989, and ending May 31, 1989. The plan always has fewer than 500 participants. The Final Filing Due Date for the short plan year is September 15, 1989. The Final Filing Due Date for the new plan year beginning on June 1, 1989, is February 15, 1990. The plan owes a full year's premium for the short plan year, and may request a refund for the period June through December of 1989.

**Example 2** By plan amendment adopted on October 1, 1989, and made retroactively effective to February 1, 1989, a plan changes from a plan year beginning on January 1 to a plan year beginning on February 1. The plan always has fewer than 500 participants. The Final Filing Due Date for the plan year that began on January 1, 1989, is September 15, 1989. The Final Filing Due Date for the new plan year, which began February 1, 1989, is October 31, 1989. The plan owes a full year's premium for the short plan year, and may request a refund for the period February through December of 1989.

**Example 3** By plan amendment adopted on May 31, 1989, and made retroactively effective to April 1, 1989, a plan changes from a plan year beginning January 1 to a plan year beginning April 1. The plan always has 500 or more participants. The First Filing Due Date for the short plan year is February 28, 1989, and

the Final Filing Due Date is September 15, 1989. The First Filing Due Date for the new plan year, which began April 1, 1989, is May 31, 1989, and the Final Filing Due Date is December 15, 1989. The plan owes a full year's premium for the short plan year, and may request a refund for the period April through December of 1989.

#### 5. Saturday, Sunday And Federal Holiday

a. Filing Due Dates. In computing any period of time described in the premium regulation and these instructions, the day of the event or default from which the period of time begins to run is not counted. The last day of the period is counted, unless it falls on a Saturday, Sunday or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday.

**Example** Plans with plan years beginning on February 1, 1989, normally would have a Final Filing Due Date of October 15, 1989. Because that day is a Sunday, the due date is Monday, October 16, 1989.

b. Interest and Penalty Charges. When computing late payment interest and penalty charges, Saturdays, Sundays and Federal holidays are included.

#### 6. Postmark Date Is Controlling

We will consider that you filed Form 1-ES or Form 1 and your premium payment on the date on which the mailing envelope is postmarked by the United States Postal Service. If the envelope does not contain a legible Postal Service postmark, we will consider that you filed the form and payment on the date that is three days before the date on which we receive it. We will disregard any private postage meter date.

#### 7. Relationship Between PBGC Form 1 And Form 5500 Series

a. Due Dates. For many plans, the deadline for filing the PBGC Form 1 and the Form 5500 series may coincide. This occurs when a corporate plan sponsor takes the automatic 6-month extension for filing its corporate tax return. This extension automatically extends the due date for filing the Form 5500 series to the tax due date.

**Example** A calendar year plan has a Final Filing Due Date for the PBGC Form 1 of September 15th. The corporate tax deadline for a calendar year tax year is March 15th, and the corporate plan sponsor takes the automatic extension to September 15th. This would make the due date for the Form 5500 series (which is normally July 31st for a calendar year plan) also September 15th. NOTE: Extensions of time to file the Form 5500 series do not extend the Filing Due Dates for the PBGC forms.

b. Participant Count. Further, the participant count for premium computation purposes for the PBGC Form 1 and the participant count for the Form 5500 series filed in the same year (1989 Form 1 and 1988 Form 5500) are generally determined as of the same date, i.e., the last day of the plan year preceding the year of the filing, and therefore, these numbers should generally be the same.

c. Plan Years Covered By Forms. However, there is a CRITICAL DIFFERENCE between the two filings. The Form 1 is filed for the current plan year and the Form 5500 series is filed for the previous plan year.

## Part D ADDRESSES

### 1. Where To File Form 1-ES And Form 1

a. Mail Service. Mail Form 1-ES and Form 1 with your premium payment(s) to:

Pension Benefit Guaranty Corporation  
P.O. Box 105655  
Atlanta, GA 30348-5655

Do not use this address for any purpose except to mail Form 1-ES and Form 1 and your premium payment(s).

b. Delivery Service. Alternatively, if you use a mail delivery service that does not deliver to a P.O. Box, the Form 1-ES and Form 1, along with your premium payment, may be hand-delivered to:

Retail Lockbox Processing Center  
PBGC Lockbox 105655  
1740 Phoenix Highway  
College Park, GA 30349

### 2. Where To Obtain Form 1-ES And Form 1

a. PBGC Mailing. We will mail a Premium Payment Package containing a Form 1-ES and Form 1 and a Schedule A to the plan sponsor of each plan that filed a Form 1 the previous year. We will mail these forms to the address shown in Item 1 of the Form 1, at least 45 days before the expected Filing Due Date.

b. Form Requests.

(i) Plan Administrator. If you do not receive a package, it is your responsibility to obtain it. To do so or if you need extra copies, contact:

Pension Benefit Guaranty Corporation  
FOD/Premium Operations Division (33700)  
2020 K Street NW  
Washington, DC 20006-1860  
Phone: (202) 778-8825

This is not a toll-free number. We cannot accept collect calls.

You may also obtain extra copies of the Premium Payment Package and forms from the Pension and Welfare Benefits Administration of the U.S. Department of Labor (see addresses following the instructions).

(ii) Pension Practitioner. If you are a pension practitioner serving many covered plans, you may wish to receive a single copy (for duplicating) or a bulk shipment of the Premium Payment Package and forms. If so, complete the order blank at the end of this Premium Payment Package. Check the appropriate box at the bottom of the order blank.

c. Facsimile. You may photocopy Form 1-ES and Schedule A. If you send us a photocopy, it must be signed in ink. We will not accept a photocopy of your signature. The PBGC will permit the use of re-typed or other facsimile forms. However, any such forms must present the same information in the same location as on the PBGC forms.

d. Forms For Prior Years. If you are filing for previous years, you may use the current Form 1 and other premium forms, but at the top of the form, you should write the year for which you are filing. However, if the forms are not the same, be sure to include all information required on the previous form.

### 3. Where To Get Help

#### In Filing The Form 1-ES Or Form 1

If you have any questions concerning your filing, including questions about the variable rate portion of the

single-employer premium, you should contact us at the address or phone number given in Item 2 above.

### 4. Where To Get A Coverage Determination

If you have any questions concerning whether your plan is covered or wish to obtain a coverage determination, contact:

Pension Benefit Guaranty Corporation  
IOD/Coverage and Inquires Branch (25400)  
2020 K Street NW  
Washington, DC 20006-1860  
Phone: (202) 778-8800

This is not a toll-free number. We cannot accept collect calls.

## Part E HOW TO CORRECT A FILING

### 1. Check Without A Form 1-ES Or Form 1

If you inadvertently sent in your check without the Form 1-ES or Form 1, as applicable, send the correct form to the address shown in Part D, Item 2.

### 2. Form Without A Check

If you have inadvertently sent us Form 1-ES or Form 1 without enclosing your check, we will return your form to you. Enclose your check with the returned form and mail them to the address shown in Part D, Item 1.

### 3. Amended Filing-Premium Underpayment

If you discover after you have filed a Form 1 with us that you have inadvertently made an error in your participant count or in the calculation of the variable rate portion of the premium due, you may use the extra forms in this booklet to file an amended form. Print or type at the top of the Form 1 and Schedule A "AMENDED FILING". Fill in the Form 1 and Schedule A as you would for your annual filing. Enter the correct total in Item 15(a) for the flat rate portion of the premium and the correct variable rate amount in Item 15(b) and enter the total of Items 15(a) and 15(b) in Item 15(c). (For multiemployer plans, enter the corrected premium amount in Item 14.) Subtract from this result the amount previously paid as shown in Item 16 and enter the difference in Item 17. Write the amount of your check for the net amount of the premium due in the space provided for "CHECK for \$\_\_\_\_\_" on the Form 1. Mail your amended Form 1 and Schedule A and check to the address shown in Part D, Item 1.

### 4. Amended Filing-Premium Overpayment

If you discover after you have filed a Form 1 with us that you overpaid your premium, follow the instructions in Item 3, except that the difference between the amount owed and the amount previously paid should be entered in Item 18. Also, you must check the appropriate box indicating whether you want this amount refunded to you or credited against your premium for next year. If you fail to check either of the boxes, we will automatically credit the overpayment against next year's premium. Mail your amended Form 1 and Schedule A to the address shown in Part D, Item 2.

## 5. How to Correct An Address

See Part G, Item 1 in the instructions if you need to correct your address and are doing so at the same time you are making your premium filing.

However, to keep our records current and to ensure that your forms will be mailed to the correct address, you should provide us with your current address as soon as a change has occurred. You may do so by contacting us either in writing or by phone using the information found in Part D, Item 2.

## Part F LATE PAYMENT CHARGES

If we receive a premium payment after the Filing Due Date, we will bill the plan for the appropriate Late Payment Charges. The charges include both interest and penalty charges. The charges are based on the outstanding premium amount due at the Filing Due Date.

### 1. Interest Charges

The Late Payment Interest Charge is set by ERISA and cannot be waived by us. The interest rate charged is established periodically (currently on a quarterly basis) and the interest rates are published in Appendix A to the premium regulation.

Late Payment Interest Charges will be assessed for any premium amount not paid when due, whether because of an estimated participant count or an erroneous participant count or other mistake in computing the premium owed.

### 2. Penalty Charges

The Late Payment Penalty Charge is established by us, subject to ERISA's restriction that the penalty not exceed 100 percent of the unpaid amount. Currently, the Late Payment Penalty Charge is the greater of:

- a. 5 percent per month (or fraction thereof) of the unpaid premium, or
- b. \$25.00,

but not more than 100 percent of the unpaid premium. (Penalty charges for premiums due for plan years prior to 1984 may be found in §2610.8 of the premium regulation.)

### 3. PBGC Waivers

Prior to the Filing Due Date, if you can show substantial hardship and that you will be able to pay the premium within 60 days after the Filing Due Date, you may request us to waive the Late Payment Penalty Charge. If we grant your request, we will waive the Late Payment Penalty Charge for up to 60 days. Waivers may also be granted based on any other demonstration of good cause.

To request a waiver, write separately to:

Pension Benefit Guaranty Corporation  
FOD/Financial Programs Division (33600)  
2020 K Street NW  
Washington, DC 20006-1860

It is YOUR responsibility as plan administrator to obtain the necessary forms and submit filings on time. We will NOT waive late payment charges resulting from your failure to do so.

### 4. IRS Extensions

NOTE: If the Internal Revenue Service has granted the plan an extension of the due date for filing the Form 5500

series, this does NOT extend the Filing Due Date for Form 1.

## 5. Minimizing Late Payment Charges

If you are having difficulty determining the actual participant count prior to the First Filing Due Date, see Part C, Item 1 "Participant Count," on how to file using an estimated participant count. This will minimize the assessment of Late Payment Charges to the plan.

If you are having difficulty determining your plan's premium prior to the Final Filing Due Date, you can file the Form 1 using an estimate. You can then file an Amended Form 1 reflecting the actual figure (see Part E for procedure). This will minimize the assessment of Late Payment Charges to the plan.

If you file a Form 1-ES for your plan by its First Filing Due Date, you may be able to avoid a Late Payment Penalty Charge with respect to that payment (see Part C). However, if the flat-rate amounts paid with your Form 1-ES and Form 1 total less than the flat rate portion of your premium for a single-employer plan (or the total premium for a multiemployer plan), then you will be charged a Late Payment Penalty Charge (as well as an Interest Charge) on the shortfall from the Form 1-ES First Filing Due Date until the shortfall is paid.

## Part G LINE-BY-LINE INSTRUCTIONS FOR FORM 1

The "Item" numbers below refer to the Item or Line numbers on the Form 1.

### Item 1 Name Of Plan Sponsor

Enter the name and address of the plan sponsor.

If the address or name printed on the cover of the PBGC Premium Payment Package has changed since your last filing, enter the correct address in the space provided and check the box in the upper right hand corner of Item 1.

It is very important that the address shown in Item 1 be correct, since this is the address we will use to mail your next Premium Payment Package.

The term "plan sponsor" means:

- (a) the employer(s), in the case of a single-employer pension plan;
- (b) the employee organization, in the case of a plan established or maintained by an employee organization; or
- (c) in the case of a plan established or maintained by two or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

### Item 2 Name Of Plan Administrator

Enter the name and address of the plan administrator.

### Item 3 Plan Sponsor's EIN and PN

#### Item 3(a) EIN For The Plan Sponsor

Enter the EIN for the plan sponsor. Be sure that the EIN entered here is the same as the EIN entered on the Form 5500 series for the plan year preceding the premium payment year.

For plans with more than one employer that meet the definition of a multiemployer plan, enter the EIN assigned to

the joint board of trustees. In the case of a plan to which more than one employer contributes (other than a multiemployer plan), enter the EIN of the plan sponsor identified in Item 1. In the case of a controlled group plan, enter the EIN of the parent or, if there is no parent, of the largest employer.

#### Item 3(b) Plan Number

Enter the Plan Number (PN) for the plan. Be sure that the PN entered here is the same as the PN entered on the Form 5500 series for the plan year preceding the premium payment year.

#### Item 3(c) Does EIN/PN Match Form 5500?

Does the EIN in item 3(a) and the PN in item 3(b) match exactly the EIN and PN entered on the Form 5500 series for the plan year preceding the premium payment year? Check the "Yes" or "No" box. If no, attach an explanation including the EIN/PN used for the Form 5500 filing, and for single-employer plans, enter that EIN/PN on the top of the Schedule A.

#### Item 4 Change In EIN Or PN

This item should be completed to report a change in EIN or PN since your last Form 1 or Form 1-ES filing. The EIN of the plan sponsor or the PN may change for a number of reasons, including the acquisition of a division or of an entire company, or because of a mistake in your previous Form 1 filing.

##### Item 4(a) Change In EIN

Enter the previous EIN in the space provided.

##### Item 4(b) Change In PN

Enter the previous PN in the space provided.

##### Item 4(c) EIN/PN Change

If the EIN or PN has changed for any reason other than a plan merger, check the box in Item 4(c), "EIN/PN Change."

##### Item 4(d) Merger Change

If the EIN or PN has changed because your plan merged with another plan, check the box in Item 4(d), "Change Due to Merger." (If more than one plan has merged into the plan whose EIN/PN is entered in Item 3, attach a separate sheet listing the EIN/PN's that were merged and provide any necessary explanation.)

##### Item 4(e) Effective Date

Enter the effective date of the change in EIN/PN.

#### Item 5 Coverage Status

If the plan is covered under section 4021 of ERISA, check 5(a) "Covered".

If you are not certain if the plan is covered, check 5(b) "Uncertain." See Part B, Item 1, and Part D, Item 4, of these instructions.

If you check "Uncertain," you *must* complete Form 1 and pay the appropriate premium as if the plan were covered. Attach a separate sheet to explain the reason why you checked "Uncertain."

#### Item 6 Filing Status

#### Item 6(a) First Plan Filing

Check the "Yes" box if you are filing for the first time, and the "No" box if you are filing for a second or subsequent time.

#### Item 6(b) Terminated Plan

Check the "Yes" box if you have issued notices of intent to terminate to affected parties (with respect to a single-employer plan), or you have filed a Notice of Termination with PBGC (with respect to a multiemployer plan).

If you check "Yes", enter the date the assets were distributed on line 6(b)(1) or enter the date a trustee was appointed under section 4042 of ERISA on line 6(b)(2). If neither event has occurred then enter "UNKNOWN" in the space provided for the dates.

**NOTE:** You must continue to file Form 1 and Form 1-ES, if applicable, and pay premiums through and including the plan year in which all assets are distributed or a trustee to administer the plan is appointed under section 4042. See Part B, Item 2, of these instructions.

#### Item 7 Plan Date

Enter the plan date. For new or continuing plans covered under section 4021 of ERISA, enter the later of -

a. the date on which the plan was formally adopted (see Example 1), or

b. the date on which the plan became effective with respect to benefit accruals for future service (see Example 2).

For existing plans not previously covered under section 4021 of ERISA, enter the date on which the plan became covered under that section (see Example 3).

If the plan has been amended or completely restated, show the original plan date.

**Example 1** A plan with a calendar year plan year was adopted on October 1, 1989, with benefit accruals for future service retroactively effective to January 1, 1989. The plan date is October 1, 1989.

**Example 2** A new plan with a calendar year plan year was adopted on November 3, 1988. The plan became effective for benefit accruals for future service on January 1, 1989. The plan date is January 1, 1989.

**Example 3** A professional service employer maintains a plan that always has had 20 participants. This type of plan is not a covered plan under ERISA section 4021, provided it never has had more than 25 participants. However, on October 10, 1989, the plan for the first time has 26 participants. As of that date, it is a covered plan and will continue to be a covered plan regardless of the plan's future participant count. The plan date is October 10, 1989.

#### Item 8 Industry Code

Enter the 4 digit code that best describes the nature of the employer's business. If more than one employer is involved, enter the industry code for the predominant business activity of all employers. Choose one code from the list at the back of this package.

**Item 9 Name Of Plan**

Enter the complete name of the plan as stated in the plan document. For example, "The ABC Company Pension Plan for Salaried Personnel."

**Item 10 Name And Phone Number Of Plan Contact**

Enter the name and phone number of the person we may contact if we have any questions concerning this filing. If Form 1 was completed by a plan consultant, you may enter the consultant's name and phone number.

**Item 11 Plan Type**

Check the appropriate box to show plan type. For purposes of determining plan type, all trades or businesses (whether or not incorporated) that are under common control are considered to be one employer.

**Item 11(a) Multiemployer Plans**

Check Item 11(a), "Multiemployer Plan," if the plan is a multiemployer plan.

All plans that file the Form 5500 series for the preceding plan year as a "Multiemployer Plan" should file the PBGC Form 1 for the current plan year as a multiemployer plan. If the two filings do not both report a multiemployer plan, you must provide an explanation on a separate sheet attached to the Form 1. All other Form 5500 series plan type categories are considered as single-employer plans for the PBGC Form 1 filing.

For any plan year beginning on or after September 26, 1980, a multiemployer plan is a plan -

- a. to which more than one employer is required to contribute,
- b. which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and
- c. which satisfies such other requirements as the Secretary of Labor may prescribe by regulation.

(The above definition does not apply to a plan that elected on or before September 26, 1981, with PBGC's approval, not to be treated as a multiemployer plan (see ERISA section 4303). Such a plan is treated as a single-employer plan.)

The plan administrator of a multiemployer plan MUST file a Form 1 and, if applicable, Form 1-ES and pay a premium for the plan as a whole. The administrator CANNOT file a separate Form 1 (or Form 1-ES) and pay a premium for each individual employer.

**Item 11(b) Single-Employer Plans**

Check Item 11(b), "Single-Employer Plan", if the plan does not meet the above definition of multiemployer plan.

A single-employer plan includes a "multiple employer plan." A multiple employer plan is a plan -

- a. to which more than one employer contributes, and
- b. that does NOT satisfy the definition of multiemployer plan, or that elected on or before September 26, 1981, with PBGC's approval, not to be treated as a multiemployer plan (see ERISA section 4303).

If several employers participate in a program of benefits wherein the funds attributable to each employer are available only to pay benefits to that employer's employees, then the plan administrator MUST file a separate Form 1, and, if applicable, Form 1-ES and pay a premium for each individual employer.

If several employers participate in a program of benefits wherein the funds attributable to each employer are available to pay benefits to all participants, then the plan administrator MUST file a Form 1, and, if applicable, Form 1-ES and pay a premium for the plan as a whole. Separate filings and premiums CANNOT be submitted for each individual employer.

If separate plans are maintained for different groups of employees, regardless of whether each has the same sponsor or the sponsors are part of the same controlled group, then the plan administrator(s) MUST file a separate Form 1, and if applicable, Form 1-ES and pay a premium for each plan.

**Item 12 Plan Year**

Enter the beginning date of the plan year for which you are making the premium payment.

If the month and day on which the plan year begins is not the same as that shown on the last Form 1 you filed with us, then check the box in Item 12. Attach a separate sheet with a brief explanation for the change.

**Item 13 Participant Count**

Enter the total number of participants covered by the plan. This is the number on which the plan's premium is based.

**a. Participant Definition**

For the purposes of Item 13, a "participant" is an individual who is included in one of the categories below:

**(i) Active.**

(A) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan. This category includes any individual who is considered covered under Code minimum coverage rules but does not have accrued benefits.

(B) Any non-vested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan. This category does not include a non-vested former employee who has incurred a break in service the greater of one year or the break in service period specified in the plan.

**(ii) Inactive**

(A) Inactive Receiving Benefits. Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan. This category does not include an individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(B) Inactive Entitled to Future Benefits. Any individual who is retired or separated from employment covered by the plan and who is entitled to begin receiving benefits under the plan in the future. This category does not include an individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

**(iii) Deceased.**

Any deceased individual who has one or more beneficiaries who are receiving or entitled to receive benefits under the plan. This category does not include an individual if an insurer has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan.

### b. Participant Count

Count the number of plan participants as of the LAST DAY OF THE PRECEDING PLAN YEAR (see Examples 1 and 2), *except* as follows:

(i) **New or Newly Covered Plans.** If this is a new plan or a newly covered plan, count participants as of the first day of the plan year for which you are making the premium payment, or the first day the plan became effective for benefit accruals for future service, if that is later (see Example 3).

(ii) **Certain Mergers or Spinoffs.** If the plan is the transferee plan in a merger or the transferor plan in a spinoff and the transaction meets the conditions described in (A) and (B) below, count participants as of the first day of the plan year for which you are making the premium payment (see Examples 4 and 5). A plan merger or spinoff (as defined in the regulations under section 414(l) of the Code) is covered by this rule if -

(A) a merger is effective on the first day of the transferee (the continuing) plan's plan year, or a spinoff is effective on the first day of the transferor plan's plan year, and

(B) the merger or spinoff is not *de minimis*, as defined in the regulations under section 414(l) of the Code with respect to single-employer plans, or under the PBGC's regulation under section 4231 of ERISA (29 CFR Part 2672) with respect to multiemployer plans.

**Example 1** A continuing plan has a plan year beginning September 1, 1989, and ending August 31, 1990. Determine the participant count as of August 31, 1989.

**Example 2** A continuing plan changes its plan year from a calendar year to a plan year that begins June 1, 1989. For the plan year beginning January 1, 1989, determine the participant count as of December 31, 1988. For the plan year beginning June 1, 1989, determine the participant count as of May 31, 1989.

**Example 3** A new plan has a plan year beginning January 1, 1990, and ending December 31, 1990. Determine the participant count as of January 1, 1990.

**Example 4** Plan A has a calendar year plan year and Plan B has a July 1-June 30 plan year. Effective January 1, 1989, Plan B merges into Plan A (and the merger is not *de minimis*). Plan A determines its participant count as of January 1, 1989. (Plan B did not exist at any time during 1989, it does not owe a premium for the 1989 plan year.)

**Example 5** Plan A has a calendar year plan year. Effective January 1, 1989, Plan A spins off assets and liabilities to form a new plan, Plan B (and the spinoff is not *de minimis*). Plan A determines its participant count as of January 1, 1989. (Plan B also determines its participant count as of January 1, 1989, since it is a new plan that became effective on that date.)

### c. Relationship To Form 5500

You must also enter the participant count reported on the plan's Form 5500 series for the plan year preceding the premium payment year, if it is different from the entry in the box in Item 13. This does not apply to new plans since they

are not required to file a Form 5500 series for the year preceding their first plan year.

The participant count you enter in Item 13 of the PBGC Form 1 is usually the same as (*but* may be less than) the participant count reported on the plan's Form 5500 series for the preceding plan year.

The Form 5500 participant count may be higher because, for premium purposes, you are not required to count nonvested participants who have left covered employment and have incurred a one year break-in-service (or the break-in-service period specified in the plan, if longer).

If the Form 5500 series participant count is higher than the premium participant count, you may enter in Item 13 the participant count you reported in the Form 5500 series. Entering the higher Form 5500 series participant count will increase the variable rate portion of the premium payable by single-employer plans.

### Item 14 Premium Due For Multiemployer Plans

Multiply the participant count you entered in Item 13 by \$2.60. Enter the result in Item 14. This is the total premium due the PBGC.

### Item 15 Premium Due For Single-Employer Plans

#### Item 15(a) Flat Rate Portion

Multiply the participant count you entered in Item 13 by \$16 and enter the result in Item 15(a). This is the flat rate portion of the premium that you owe.

#### Item 15(b) Variable Rate Portion

In Item 15(b) enter the amount entered in line 9 of Schedule A. This is the amount you must pay for the variable rate portion of the premium.

#### Item 15(c) Total Premiums

Add Items 15(a) and 15(b) and enter the result in Item 15(c) of the Form 1. This is the total premium due the PBGC.

### Item 16 Premium Amount Previously Paid

If you filed a Form 1-ES and paid any amount of the premium owed for the same plan year for which you are filing this Form 1, enter amount paid. In addition, if you claimed a credit on line 18 of your 1988 Form 1, include the amount of the credit on line 16.

### Item 17 Premium Due The PBGC

If this is a multiemployer plan and the amount you entered in Item 14 exceeds the amount entered in Item 16, subtract the amount entered in Item 16 from the amount entered in Item 14 and enter the result in Item 17 of Form 1. This is the amount you owe the PBGC.

If this is a single-employer plan and the amount you entered in Item 15(c) exceeds the amount entered in Item 16, subtract the amount entered in Item 16 from the amount entered in Item 15(c) and enter the result in Item 17 of the Form 1. This is the amount you owe the PBGC.

Enclose with the Form 1 a check for the amount shown in Item 17 payable to the Pension Benefit Guaranty Corporation. Enter the amount of the check payable in the space provided. Write the EIN/PN you entered in Item 3

on the check. To assure proper crediting of your premium payment, each Form 1 for each EIN/PN must be filed with a check for the exact amount due for the plan. Do not combine payments for different plans in one check.

### Item 18 Amount Of Overpayment

If this is a multiemployer plan and the amount you entered in Item 14 is less than the amount entered in Item 16, subtract the amount entered in Item 14 from the amount entered in Item 16 and enter the result in Item 18. This is the amount of your overpayment.

If this is a single-employer plan and the amount you entered in Item 15(c) is less than the amount entered in Item 16, subtract the amount entered in Item 15(c) from the amount entered in Item 16 and enter the result in Item 18. This is the amount of your overpayment.

You may either request a refund of the overpayment or have that amount credited against your plan's premium for the next plan year. Check the appropriate box indicating your choice beneath Item 18. If you do not check a box, PBGC will automatically credit your overpayment against next year's premium for the plan. An overpayment on one plan cannot be applied to an underpayment on one or more other plans.

### Item 19 Additional Information

If you have used attachments other than the Schedule A to explain any of your answers, check the box. Be sure to show the plan name and the EIN/PN at the top of each sheet.

### Item 20 Certification Of Multiemployer Plan Administrator

As plan administrator of a multiemployer plan, you must sign the Form 1 in this space. We may return any filing that does not have your signature. Single-employer plans - see Items 10 and 11 of Schedule A to Form 1.

## Part H GENERAL INSTRUCTIONS, SCHEDULE A

The instructions in this part give you the general instructions and requirements for filling out the Schedule A that must be attached to each Form 1 for each single-employer plan.

A key point to filling out the Schedule A is the requirement for you to select a "Filing Method" for your plan. Your plan may be eligible for more than one filing method. However, you may select only one filing method. Under some filing methods, it may take more time to complete the Schedule A than under others. Some methods require the services of an enrolled actuary.

In order that you may take advantage of the filing method that best suits your needs, we urge you to review this part carefully before completing the Schedule A.

The specific instructions for each line of the Schedule A are in Part I, Line-By-Line-Instructions for Schedule A.

### 1. General Requirements

All single-employer plans must complete Schedule A of PBGC Form 1. You will use Schedule A to determine the amount of the variable rate portion of the premium. For some plans, the amount will be \$0. The variable rate portion, including a \$0 amount, must be entered on both the Schedule A, line 9, and on the PBGC Form 1, Line 15(b).

You, and in some cases an enrolled actuary, must certify that the variable rate portion is correct even if the amount is \$0.

The per participant variable rate portion of the premium is \$6 per \$1,000, or fraction thereof, of unfunded vested benefits as of the last day of the plan year preceding the premium payment year, divided by the number of plan participants. The vested benefits must be valued using an interest rate required by ERISA. (See Part H7.)

The variable rate portion may not exceed \$34 per participant. The \$34 maximum figure is reduced by \$3 for each of the five plan years preceding the plan year beginning in 1988 for which the maximum deductible contributions to the plan were made.

### 2. Failure To File Schedule A

If you fail to file a completed and signed Schedule A, the variable rate amount due will be the maximum \$34 per participant charge and you will be billed for that amount plus penalties and interest, as applicable.

### 3. Computation Date For The Variable Rate Portion Of The Premium

The date for the computation or determination of the variable rate portion for the premium is generally the last day of the plan year preceding the premium payment year and is the same date as the participant count date.

However, for new or newly covered plans, plans that are transferee plans in a merger (other than a *de minimis* merger) that is effective on the first day of the plan's premium payment year, and plans that are transferor plans in a spinoff (other than a *de minimis* spinoff) that is effective on the first day of the plan's premium payment year, the "first day of the premium payment year (or, in the case of a new or newly covered plan, the date on which the plan became effective for benefit accruals for future service, if later)" should be substituted for the "last day of the plan year preceding the premium payment year" whenever that latter date is used in Parts H and I of these instructions. This exception is the same as the exception for the participant count date for the same situations; see the instructions under Part G, Item 13, for additional information and examples.

### 4. Filing Methods

You determine the variable rate portion of the premium on Schedule A under the "General Rule" or under an optional filing method.

All single-employers plans are eligible to use the "General Rule." The General Rule requires a determination of vested benefits and assets and a determination of unfunded vested benefits by an enrolled actuary as of the last day of the plan year preceding the premium payment year. (For a more complete description of the requirements, see 5.a. below.)

To avoid the expense that might be involved in using the General Rule, you may wish to consider using an optional filing method.

The optional filing methods are:

- a. Alternative Calculation Method. (See 5.b. below.)
- b. Plans with no vested participants. (See 5.c(i) below.)
- c. Section 412(i) plans. (See 5.c(ii) below.)
- d. Fully funded small plans (under 500 participants). (See 5.c(iii) below.)
- e. Plans terminating in standard terminations. (See 5.c(iv) below.)
- f. Plans terminating in distress or involuntary terminations. (See 5.c(v) below.)

Review the requirements for each method to see if you can or wish to use it. The first optional filing method - the Alternative Calculation Method - requires only an adjustment of amounts determined as of the first day of the plan year preceding the premium payment year that were reported in the plan's Form 5500, Schedule B.

If you file under optional filing methods b. through e., you do not have to determine or calculate unfunded vested benefits and you do not have to pay a variable rate portion of the premium. Optional filing method f. is a variation of the Alternative Calculation Method for plans terminating in distress or involuntary terminations. It uses the Schedule B for the termination plan year or, if unavailable, for the preceding plan year.

## 5. Requirements For Filing Method Selection

Listed below are the requirements for the filing methods and the location of the line-by-line instructions for completing Schedule A under each of the filing methods.

All the filing methods require the plan administrator to certify to the correct completion of Form 1 and Schedule A, and that any information given to the enrolled actuary is true, correct and complete. Additional certifications are noted below.

a. *General Rule.* Under the General Rule, an enrolled actuary determines the amount of unfunded vested benefits as of the last day of the plan year preceding the premium payment year, in accordance with generally accepted actuarial principles and practices. A plan's unfunded vested benefits equal the excess of: (1) the plan's current liability (within the meaning of ERISA section 302(d)(7)) determined by taking into account only vested benefits and valued at the Required Interest Rate described in Part H7. of these instructions, over (2) the actuarial value of the plan's assets determined in accordance with ERISA section 302(c)(2) without a reduction for any credit balance in the plan's funding standard account.

(i) *General Requirements:* The determination under the General Rule must reflect the plan's population and provisions as of the last day of the plan year preceding the premium payment year. The enrolled actuary must make the determination using the same actuarial assumptions and methods used by the plan for purposes of determining the minimum funding contributions under section 302 of ERISA and section 412 of the Code for the plan year preceding the premium payment year (or, in the case of a new or newly covered plan, for the premium payment year), except to the extent that other actuarial assumptions are specifically prescribed by these instructions or are necessary to reflect the occurrence of a significant event described in Part H6. below, between the date of the funding valuation and the last day of the plan year preceding the premium payment year. (If the plan does a funding valuation as of the last day of the plan year preceding the premium payment year, no separate adjustment for significant events is needed.)

The value of vested benefits must be determined using an interest rate prescribed by ERISA. This interest rate is 80% of the annual yield on 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 or H.15, for the calendar month preceding the calendar month in which the plan year begins. (See Part H7. of these instructions for further information on the Required Interest Rate.)

Under this rule, the determination of the unfunded vested benefits may be based on a plan funding valuation done as of the first day of the premium payment year, provided that --

(A) the actuarial assumptions and methods used are those used by the plan for purposes of determining the minimum funding contributions under section 302 of the Act and section 412 of the Code for the premium payment year, except to the extent that other actuarial assumptions are specifically prescribed by these instructions or are required to make the adjustment described in paragraph (B) below; and

(B) if an enrolled actuary determines that there is a material difference between the values determined under the valuation and the values that would have been determined as of the last day of the preceding plan year, the valuation results are adjusted to reflect appropriately the values as of the last day of the preceding plan year. (This adjustment need not be made if the unadjusted valuation would result in greater unfunded vested benefits.)

(ii) *Certification Requirement* (in addition to general plan administrator certification): In all cases under the General Rule, an enrolled actuary must certify to the determination of the variable rate portion of the premium. In addition --

(A) in the case of a large plan (500 or more participants), if the enrolled actuary

-- determines that the actuarial value of plan assets equals or exceeds the value of all accrued benefits (valued at the Required Interest Rate described in Part H7. of these instructions); and

-- elects to report the value of accrued benefits in lieu of the value of vested benefits in line 2(a) of Schedule A,

the enrolled actuary must certify to having done so on line 11(a) of Schedule A.

(B) If

-- each interest rate used by the plan to value current liability was not greater than the Required Interest Rate described in Part H7. of these instructions; and

-- the enrolled actuary reports the value of vested benefits at the plan's interest rate(s) on line 2(b) of Schedule A,

the enrolled actuary must certify to the above on line 11(c) of Schedule A.

(C) In the case of a plan maintained by a nonprofit entity, if an enrolled actuary determines that the plan qualifies for the per participant cap reduction under the special rule for nonprofit entities, the enrolled actuary must so certify on line 11(d) of Schedule A.

(iii) *Size Requirement:* Plans with any number of participants may use this method.

(iv) *Instructions:* For line-by-line instructions for completing Schedule A, see Part I, Subpart 1 of these instructions.

(v) *Schedule A Filing Method:* Check the box on line 1(a).

b. *Alternative Calculation Method.* This method is a simplified method intended to approximate the more precise determinations of the General Rule. It uses two formulae to

calculate unfunded vested benefits as of the last day of the plan year preceding the premium payment year.

The first formula adjusts the value of vested benefits for participants in pay status and deferred vested participants as reported in Schedule B of the Form 5500 as of the first day of the plan year preceding the premium payment year, using the Required Interest Rate prescribed by ERISA. Part H7. of these instructions explains where to find the Required Interest Rate.

The second formula adjusts the resulting unfunded vested benefits figure for the passage of time from the first day of the plan year preceding the premium payment year to the last day of the plan year preceding the premium payment year. The adjustment is necessary because, for premium purposes, unfunded vested benefits are determined as of the last day of the plan year preceding the premium payment year. See the line-by-line instructions in Part I, Subpart 2, lines 2(b) and 4, for the two formulae.

If the Alternative Calculation Method is used by a plan that has 500 or more participants as of the last day of the plan year preceding the premium payment year, an enrolled actuary must adjust the unfunded vested benefits to reflect the occurrence of any significant event during the plan year preceding the premium payment year. See Part H6. for a list of significant events.

(i) **General Requirements:** To use the Alternative Calculation Method, a plan must have filed a Form 5500, Schedule B, for the plan year preceding the premium payment year, that has -

(A) vested benefit values reported on lines 6d(i) and 6d(ii);

(B) the interest rates used to determine the vested benefit values reported on line 12c;

(C) the assumed retirement age reported on line 12d; and

(D) assets reported on line 8b or 6c.

(ii) **Certification Requirements** (in addition to general plan administrator certification): If -

(A) each interest rate used to determine the entries in lines 6d(i) and 6d(ii) of the Schedule B was not greater than the interest rate described in Part H.7. of these instructions; and

(B) the plan administrator reports the value of vested benefits at the plan's rate(s) in line 2(b) of Schedule A,

the plan administrator must certify to the above on line 10(c) of Schedule A.

For plans with 500 or more participants, an enrolled actuary must certify that the unfunded vested benefits have been adjusted for the occurrence, if any, of a significant event and that the adjustment is consistent with generally accepted actuarial principles and practices.

In the case of a plan maintained by a nonprofit entity that is claiming entitlement to the cap reduction, an enrolled actuary must certify on line 11(d) that the plan meets the requirements for doing so, as described under the instructions for line 7 in Subpart 2 of Part I.

(iii) **Size Requirements:** Plans with any number of participants may use this method. However, plans with 500 or more participants that use this method must report unfunded vested benefits that reflect the occurrence, if any, of significant events listed in Part H6.

(iv) **Instructions:** For line-by-line instructions for completing Schedule A, see Part I, Subpart 2, of these instructions.

(v) **Schedule A Filing Method:** Check the applicable box on line 1(b). If your plan has fewer than

500 participants, check the box on line 1(b)(1). If your plan has 500 or more participants, check the box on line 1(b)(2).

c. **Plans Not Required to Determine Unfunded Vested Benefits.** Certain categories of plans are not required to determine or report vested benefits, assets or unfunded vested benefits on Schedule A. These plans are required only to complete lines 1 and 9 on the Schedule A indicating that the plan comes within one of the exempted categories and to provide the appropriate plan administrator or enrolled actuary certification.

(i) **Plans with No Vested Participants.** If a plan has no vested participants as of the last day of the plan year preceding the premium payment year, the plan administrator may use this filing method and report \$0 unfunded vested benefits on the Schedule A.

(A) **General Requirements:** To use this rule a plan must have had no vested participants as of the last day of the plan year preceding the premium payment year. PBGC will accept that if there are no vested participants, there are no vested benefits and no unfunded vested benefits.

(B) **Certification Requirement** (in addition to general plan administrator certification): The plan administrator must certify that there were no vested participants.

(C) **Size Requirement:** Plans with any number of participants may use this method.

(D) **Instructions:** For line-by-line instructions for completing Schedule A, see Part I, Subpart 3, of these instructions.

(E) **Schedule A Filing Method:** Check the box on Schedule A, Line 1(c)(1).

(ii) **Section 412(i) Plans.** Plans described in section 412(i) of the Internal Revenue Code and regulations thereunder are not subject to the variable rate premium charge and report \$0 unfunded vested benefits on Schedule A.

(A) **General Requirements:** To use the section 412(i) plan rule, a plan must be a plan described in section 412(i) of the Code and the regulations thereunder at all times during the plan year preceding the premium payment year. If the plan is a new or newly covered plan, it must be a 412(i) plan at all times during the premium payment year through the due date for the variable rate portion of the premium.

(B) **Certification Requirement** (in addition to general plan administrator certification): The plan administrator must certify that the plan is a 412(i) plan.

(C) **Size Requirement:** Plans with any number of participants may use this method.

(D) **Instructions:** For line-by-line instructions for completing Schedule A, see Part I, Subpart 4, of these instructions.

(E) **Schedule A Filing Method:** Check the box on Schedule A, Line 1(c)(2).

(iii) **Fully Funded Small Plans.** Under this rule, an enrolled actuary certifies that the plan has no unfunded vested benefits. No computations of unfunded vested benefits need be reported. The enrolled actuary simply reports \$0 unfunded vested benefits on Schedule A.

(A) **General Requirements:** To use this rule, a plan must have fewer than 500 participants as of the last day of the plan year preceding the premium payment year and no unfunded vested benefits as of

that date (valued at the Required Interest Rate described in Part H7. of these instructions).

(B) Certification Requirements (in addition to general plan administrator certification): The enrolled actuary must certify that the plan had fewer than 500 participants and that the plan had no unfunded vested benefits as of the last day of the plan year preceding the premium payment year (valued at the Required Interest Rate described in Part H7. of these instructions).

(C) Size Requirement: Only plans with fewer than 500 participants on the last day of the plan year preceding the premium payment year can use this method.

(D) Instructions: For line-by-line instructions for completing Schedule A, see Part I, Subpart 5, of these instructions.

(E) Schedule A Filing Method: Check the box on Schedule A, Line 1(c)(3).

(iv) Plans Terminating in Standard Terminations.

Under this exemption, plans terminating in standard terminations are not subject to the variable rate premium charge and report \$0 unfunded vested benefits on Schedule A.

(A) General Requirement: Plans that issued a notice of intent to terminate in a standard termination in accordance with section 4041(a)(2) of ERISA, setting forth a proposed date of termination (i.e., the 60-day prospective date) on or before the last day of the plan year preceding the premium payment year may use this method.

If the plan does not ultimately make a final distribution of assets in full satisfaction of its obligations under the standard termination, the right to use this filing method will be revoked and the premium(s) that would otherwise have been required will be due retroactive to the applicable due date(s).

(B) Certification Requirement (in addition to general plan administrator certification): None. Only the general plan administrator certification is required.

(C) Size Requirement: Plans with any number of participants may use this method.

(D) Instructions: For line-by-line instructions for completing Schedule A, see Part I, Subpart 6, of these instructions.

(E) Schedule A Filing Method: Check the box on Schedule A, line 1(c)(4).

(v) Plans Terminating In Distress Or Involuntary Terminations. Under this special rule, plans terminating in distress or involuntary terminations may use a modified version of the Alternative Calculation Method.

(A) General Requirements: The following plans may use this method:

- Plans that issue notices of intent to terminate in a distress termination in accordance with ERISA section 4041(a)(2) setting forth a proposed termination date on or before the last day of the plan year preceding the premium payment year; or
- Plans for which the PBGC has initiated proceedings for an involuntary termination and has sought a termination date on or before the last day of the plan year preceding the premium payment year.

Some plans terminating in distress or involuntary terminations may not have filed the

Schedule B for the plan year preceding the premium payment year and therefore would not be able to use the Alternative Calculation Method to calculate unfunded vested benefits. This filing method allows such plans to calculate unfunded vested benefits under a variation of the Alternative Calculation Method that uses vested benefit values and asset values from an earlier Schedule B than under the Alternative Calculation Method. The Schedule B used under this special rule must be for the plan year that includes (in the case of a distress termination) the proposed date of termination or (in the case of an involuntary termination) the termination date sought by the PBGC, or, if no Schedule B is filed for that plan year, the Schedule B for the preceding plan year. The Schedule B must have the entries required for the Alternative Calculation Method, as described in Part H5.b(i) of these instructions. (Note: Line item references are to the 1988 Schedule B. If your Schedule B is for an earlier year with different line numbers, use the corresponding entries.)

Note: This method assumes (in the case of a distress termination) that the PBGC has not disapproved the termination or (in the case of an involuntary termination) that the PBGC's petition for involuntary termination has not been denied, dismissed or withdrawn. At such time as any of these events occurs, the plan will be treated as an ongoing plan and must file amended premium forms using another permitted filing method.

(B) Certification Requirement (in addition to general plan administrator certification): Same as for Alternative Calculation Method. (See Part H5.b(ii) of these instructions.)

(C) Size Requirement: Same as for Alternative Calculation Method. (See Part H5.b(iii) of these instructions.)

(D) Instructions: For line-by-line instructions for completing Schedule A, see Part I, Subpart 7, of these instructions.

(E) Schedule A Filing Method: Check the box on Schedule A, line 1(d).

## 6. Significant Events

a. General Rule. Plans filing under the General Rule must use actuarial assumptions and methods that reflect the occurrence, if any, of a significant event listed below between the date of the funding valuation for the plan year preceding the premium payment year and the last day of the plan year preceding the premium payment year.

b. Alternative Calculation Method. Plans with 500 or more participants filing under the Alternative Calculation Method are required to reflect in the value of unfunded vested benefits as of the last day of the plan year preceding the premium payment year of the occurrence, if any, of a significant event listed below during the plan year preceding the premium payment year.

c. Distress Or Involuntary Terminations. Plans with 500 or more participants filing under the method for plans terminating in distress or involuntary terminations are required to reflect in the value of unfunded vested benefits as of the last day of the plan year preceding the premium payment year the occurrence, if any, of a significant event listed below between the first day of the plan year for which the Schedule B being used was filed and the last day of the plan year preceding the premium payment year.

d. Significant Events. In each of the above circumstances, the plan's enrolled actuary must make appropriate adjustments to reflect the occurrence of any significant event.

The Significant Events are:

(1) an increase in the plan's actuarial costs (consisting of the plan's normal cost under section 412(b)(2)(A) of the Code, amortization charges under section 412(b)(2)(B) of the Code, and amortization credits under section 412(b)(3)(B) of the Code) attributable to a plan amendment, unless the cost increase attributable to the amendment is less than 5% of the actuarial costs determined without regard to the amendment;

(2) the extension of coverage under the plan to a new group of employees resulting in an increase of 5% or more in the plan's liability for accrued benefits;

(3) a plan merger, consolidation or spinoff that is not de minimis pursuant to the regulations under section 414(l) of the Code;

(4) the shutdown of any facility, plant, store, etc., that creates immediate eligibility for benefits that would not otherwise be immediately payable for participants separating from service;

(5) the offer by the plan for a temporary period to permit participants to retire at benefit levels greater than that to which they would otherwise be entitled;

(6) a cost-of-living increase for retirees resulting in an increase of 5% or more in the plan's liability for accrued benefits; and

(7) any other event or trend that results in a material increase in the value of unfunded vested benefits.

## 7. Required Interest Rate For Valuing Vested Benefits Under The General Rule, Alternative Calculation Method, And The Distress And Involuntary Terminations Method

The following table - taken from Appendix B to the PBGC's premium regulation - lists the Required Interest Rates to be used in valuing a plan's vested benefits under the General Rule, the Alternative Calculation Method, and the method for plans terminating in distress or involuntary terminations. The table contains all interest rates available when these instructions were printed.

PBGC will update Appendix B in the *Federal Register* on a quarterly basis, by publishing the rates for November through January on or about January 15, for February through April on or about April 15, for May through July on or about July 15, and for August through October on or about October 15. In addition, the PBGC will issue a Technical Update for Interest Rates for Valuing Vested Benefits for PBGC's Variable Rate Premium. The Technical Update will be mailed monthly to pension practitioners who ask for it from PBGC's Communication and Public Affairs Department, 2020 K Street, NW, Washington, DC 20006-1806 (202) 778-8840.

Plan administrators are also notified of the Required Interest Rate for the premium payment year on the mailing label on these instructions. The top line of the mailing label on your premium payment package shows the Required Interest Rate for your plan. The rate is determined by the month in which your plan year begins. Check the month on the mailing label to make sure it corresponds to the first month of your plan year.

For Premium Payment Year Beginning In	The Required Interest Rate is <sup>1</sup>
January 1989	7.21
February 1989	7.14
March 1989	7.21
April 1989	7.34
May 1989	7.22
June 1989	7.06

<sup>1</sup> The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

**Example** If the first month of the premium payment year is January 1989, use the Appendix B required interest rate for January 1989, of 7.21 percent.

## Part I LINE-BY-LINE INSTRUCTIONS FOR SCHEDULE A

The instructions in this Part are divided into a separate "Subpart" for each one of the "Filing Methods" shown on line 1 of Schedule A.

To see which filing method your plan may use, see Part H5., Requirements for Filing Method Selection.

You will only need to follow the instructions in the Subpart for the filing method you select. Each Subpart has all the instructions you will need to fill out each line on the Schedule A for the filing method you use.

Some filing methods do not require that all lines on the Schedule A be completed. So for those methods, we have only provided instructions for the lines that do need to be completed.

Below is an index to the Subparts in this part. On the left under "FILING METHOD" are the filing methods with the appropriate box for you to check on Schedule A, line 1, to indicate your choice. On the right under "SUBPART" is the appropriate Subpart in this Part with the line-by-line instructions.

### Index to Part I Subparts

FILING METHOD (Box to check on line 1)	SUBPART
a. General Rule: (Box (a) on line 1)	Subpart 1
b. Alternative Calculation Method:	
(1) Plans with fewer than 500 participants. (Box (b)(1) on line 1)	Subpart 2
(2) Plans with 500 or more participants. (Box (b)(2) on line 1)	Subpart 2
c. Plans not required to determine unfunded vested benefits:	
(1) Plans with No Vested Participants. (Box (c)(1) on line 1)	Subpart 3
(2) 412(i) Plans. (Box (c)(2) on line 1)	Subpart 4
(3) Fully Funded Plans with fewer than 500 participants. (Box (c)(3) on line 1)	Subpart 5
(4) Plans Terminating in Standard Terminations. (Box (c)(4) on line 1)	Subpart 6

- d. Plans Terminating in Distress or  
Involuntary Terminations.  
(Box (d) on line 1) . . . . . Subpart 7

### Subpart 1 GENERAL RULE

Be sure to read Part H5.a. carefully, in addition to the following line-by-line instructions.

#### Line 1 Filing Method

If you use the General Rule, you must check the box on line 1(a). If you use the accrued benefits rule for plans with 500 or more participants for line 2(a), check the box on line 1 and have the enrolled actuary initial the box on line 11(a) as part of the required certification for all plans using the General Rule.

#### Line 2 Present Value Of Vested Benefits

You must report on line 2 the value of the plan's vested benefits. The value of a plan's vested benefits for premium purposes equals the amount of a plan's current liability (within the meaning of section 302(d)(7) of ERISA) determined by taking into account only vested benefits. You must report on line 2(a) the value of vested benefits using the plan's interest rate for determining current liability, and on line 2(b) the value of vested benefits using the Required Interest Rate.

#### Relief Rule

#### Accrued Benefit Relief Rule For Large Plans

This is a special rule providing relief from determining vested benefits for certain plans that had 500 or more participants on the last day of the plan year preceding the premium payment year.

If an enrolled actuary determines that the Total Value of Plan Assets on line 3(d) equals or exceeds the value of all benefits accrued under the plan (using plan assumptions, except that the benefits must be valued at the Required Interest Rate as defined in the instructions to Line 2(b)), the enrolled actuary need not determine the value of the plan's vested benefits. The actuary may instead report on lines 2(a) the value of accrued benefits using the plan's assumptions and on 2(b) the value of accrued benefits adjusted only for the Required Interest Rate.

If you use this rule, check the box on line 1(a)(2) and have the enrolled actuary initial box (a) on line 11.

#### Relief Rule

#### Interest Adjustment Relief Rule

If the Required Interest Rate for your plan is equal to or greater than the plan interest rate (or, in the case of multiple interest rates, all rates) used to value the benefits entered on line 2(a), you may enter on line 2(b) the same amounts you entered on line 2(a).

If you use this relief rule for line 2(b), the enrolled actuary for the plan must initial box (c) on line 11.

#### Determination Date

Enter the date as of which vested benefits were valued for premium purposes. The valuation date must be either the first day of the premium payment year or the last day of the plan year preceding the premium payment year.

#### Assumed Retirement Age

Enter the assumed retirement age used to determine the present value of vested benefits for participants and beneficiaries not receiving payments.

#### Required Interest Rate

Enter the Required Interest Rate (See Part H7. of these instructions) that must be used by the plan to value vested benefits for premium purposes.

#### Accrual Factor

The accrual factor refers to the benefit accrual adjustment factor which does not apply to plans using the General Rule. Do not enter anything in this space.

#### Line 2(a)(1) Plan Value of Vested Benefits - Those Receiving Payments

In the "Value" column, enter the present value of vested benefits for retirees and beneficiaries receiving payments.

In the "Interest Rate" column, enter the interest rate used to determine that present value. (If more than one interest rate was used, the rate entered must be a weighted average composite rate.)

#### Line 2(a)(2) Plan Value of Vested Benefits - Those Not Receiving Payments

In the "Value" column, enter the present value of vested benefits for participants and beneficiaries not receiving payments. This includes all active vested participants and separated participants with deferred vested benefits.

In the "Interest Rate" column, enter the interest rate used to determine that present value. This includes all active vested participants and separated participants with deferred vested benefits. (If more than one interest rate was used, the rate entered must be a weighted average composite rate.)

#### Line 2(a)(3) Total Plan Value Of Vested Benefits

Enter the total amount of the present value of vested benefits determined with the plan's actuarial assumptions. This is the total of line 2(a)(1) plus line 2(a)(2).

#### Line 2(b) Adjusted Value Of Vested Benefits

You must report on line 2(b) the adjusted value of vested benefits using the Required Interest Rate entered on line 2. The determination of the adjusted value must meet all the requirements set forth in Part H5.a. of these instructions.

#### Line 2(b)(1) Adjusted Value Of Vested Benefits - Those Receiving Payments

Enter the adjusted present value of vested benefits for retirees and beneficiaries receiving payments, determined by adjusting the amount on line 2(a)(1) in accordance with the requirements set forth in Part H5.a. of these instructions.

**Line 2(b)(2) Adjusted Value  
Of Vested Benefits -  
Those Not Receiving Payments**

Enter the adjusted present value of vested benefits for participants *not* receiving payments, determined by adjusting the amount on line 2(a)(2) in accordance with the requirements set forth in Part H5.a. of these instructions.

**Line 2(b)(3) Total Adjusted Vested Benefits**

Enter the total amount of the present value of adjusted vested benefits. This is the sum of line 2(b)(1) plus line 2(b)(2).

**Line 3 Value Of Plan Assets**

**Line 3(a) Value Of Plan Assets  
As Of Determination Date**

Enter the date as of which assets were valued for premium purposes. The date must be the same as the determination date you entered on line 2.

Enter the actuarial value of the plan's assets determined in accordance with ERISA section 302(c)(2) without a reduction for any credit balance in the funding standard account. You may not include on line 3(a) contributions for the premium payment year or later, whether or not made. Adjust all receipts and disbursements for interest.

**Line 3(b) Contribution Receivables  
In Line 3(a)**

Enter the sum of employer and employee contribution receivables that were included in the line 3(a) amount.

**Line 3(c) Discounted Paid Contributions**

For plans with fewer than 500 participants, this line is optional; you may go to line 3(d). If you do not complete this line, you may understate the adjusted value of assets you will report on line 3(d). If this would affect the amount of the variable rate premium that the plan owes, you may wish to complete line 3(c).

Enter on line 3(c) the discounted value, as of the determination date entered on line 3, of those employer and employee contributions for plan years prior to the premium payment year that were either reported on line 3(b) (because they were included as receivables in the line 3(a) amount) or that were not included (as receivables or otherwise) in the Line 3(a) amount. However, do not include in line 3(c) either any contributions that are for the premium payment year or any contributions that have not been paid on or before the earlier of the premium due date or the date the premium is paid.

The plan asset valuation rate must be used to discount contributions, on a simple or compound basis in accordance with the plan's discounting rules.

**Line 3(d) Adjusted Value Of Plan Assets**

Enter the sum of line 3(a), minus line 3(b), plus line 3(c).

**Line 4 Adjusted Unfunded Vested Benefits**

The adjusted unfunded vested benefits is the excess, if any, of the Total Adjusted Vested Benefits entered on line

2(b)(3) over the Adjusted Value of Plan Assets entered on line 3(d).

If line 2(b)(3) is *less* than line 3(b), enter \$0 here and go to line 9 and enter \$0; if not, subtract line 3(d) from line 2(b)(3), round up to the next \$1,000, and enter here.

An enrolled actuary must certify that the determination of unfunded vested benefits was made in a manner consistent with generally accepted actuarial principles and practices. The certification is made by signing and completing line 11.

**Line 5 Multiply Line 4 By 0.006**

Multiply the adjusted unfunded vested benefit amount on line 4 by 0.006 and enter on line 5.

**Line 6 Divide Line 5 By  
The Participant Count**

Enter the participant count from Form 1, line 13. Divide the amount on line 5 by this number and enter. Round to the nearest cent. This is the initial per participant variable rate portion of the premium, but it may be reduced by the calculation on line 7.

**Line 7 Per Participant Cap**

The instructions for line 7 are the same as under the Alternative Calculation Method. See Part I, Subpart 2, line 7.

**Line 8 The Lesser Of Line 6 Or 7**

Enter the *lesser* of line 6 or line 7. This is the per participant variable rate portion of your premium payment.

**Line 9 Variable Rate Portion  
Of The Premium**

Enter on line 9 and on Form 1, line 15(b), the variable rate portion of the premium. You have two alternatives:

(a) If you have a plan with Adjusted Unfunded Vested Benefits shown on line 4, enter the line 8 amount multiplied by the participant count from Form 1, Line 13. Also enter the participant count on line 9(a).

(b) If you have a plan that has *NO* Adjusted Unfunded Vested Benefits shown on line 4, enter \$0.

**Line 10 Plan Administrator Certification**

As plan administrator, you must personally sign and date the certification in the space provided. We may return any filing that does not have your signature. Under the General Rule, the plan administrator is not required to initial any of the boxes on line 10.

**Line 11 Enrolled Actuary Certification**

An enrolled actuary must personally sign, date and enter his or her enrollment number and address in the space provided on the certification on line 11. If the box on line 1(a) was checked indicating the Accrued Benefit Relief Rule for line 2 was used, an enrolled actuary must initial box (a) on line 11. If the Interest Adjustment Relief Rule was used for line 2, an enrolled actuary must initial box (c) on line 11. If the line 7 special rule no. 5 for the reduced per participant cap for nonprofit entities was used, an enrolled actuary must initial box (d) on line 11.

**Subpart 2 ALTERNATIVE  
CALCULATION METHOD**

**Line 1 Filing Method**

If you use the Alternative Calculation Method, you must check one of the boxes on line 1(b).

If your plan has fewer than 500 participants, check box 1(b)(1).

If your plan has 500 or more participants, check box 1(b)(2). You will need to have your enrolled actuary sign the certification on line 11.

**Line 2 Present Value Of Vested Benefits****Determination Date**

Enter the date as of which the vested benefits for the 1988 Form 5500, Schedule B, line 6d, were valued. That date must be the first day of the 1988 plan year. If it is not, you cannot use the Alternative Calculation Method.

**Assumed Retirement Age**

Enter the assumed retirement age used to determine the present value of vested benefits for participants and beneficiaries *not* receiving payments. The entry must be the same as the retirement age actuarial assumption reported on the 1988 Form 5500, Schedule B, line 12d, column A, Pre-retirement.

**Required Interest Rate**

Enter the Required Interest Rate (see Part H7. of these instructions) that must be used to determine the adjusted present value of vested benefits.

**Accrual Factor**

The accrual factor refers to the benefit accrual adjustment factor of 1.07 that you use in the "Line 2(b)(3) Procedure."

**Line 2(a)(1) Plan Value Of Vested Benefits - Those Receiving Payments**

In the "Value" column, enter the present value of vested benefits for retirees and beneficiaries receiving payments, determined as of the first day of the 1988 plan year. The amount entered must be the same as the amount reported on the 1988 Form 5500, Schedule B, line 6d(i), "Present value of vested benefits as of the beginning of the plan year for retired participants and beneficiaries receiving payments."

In the "Interest Rate" column, enter the plan interest rate used to determine the present value of vested benefits for retirees and beneficiaries receiving payments. The interest rate must be the same as the rate reported on the 1988 Form 5500, Schedule B, line 12c, column A, Post-retirement.

**Line 2(a)(2) Plan Value Of Vested Benefits - Those Not Receiving Payments**

In the "Value" column, enter the present value of vested benefits for participants *not* receiving payments, determined as of the first day of the 1988 plan year. This includes all active vested participants and separated participants with deferred vested benefits. The amount entered must be the same as the amount reported on the 1988 Form 5500, Schedule B, line 6d(ii), "Present value of vested benefits as of

the beginning of the plan year for other participants for the 1988 plan year."

In the "Interest Rate" column, enter the plan interest rate used to determine the present value of vested benefits for participants *not* receiving payments. The interest rate must be the same as the rate reported on the 1988 Form 5500, Schedule B, line 12c, column A, Pre-retirement.

**Line 2(a)(3) Total Plan Value Of Vested Benefits**

Enter the total amount of the present value of vested benefits determined with the plan's actuarial assumptions. This is the total of line 2(a)(1) plus line 2(a)(2). The amount entered must be the same as the amount on the Form 5500, Schedule B, line 6d(iii), "Total present value of vested benefits as of the beginning of the 1988 plan year."

**Line 2(b)(1) Adjusted Value Of Vested Benefits - Those Receiving Payments**

Enter the adjusted present value of vested benefits for retirees and beneficiaries receiving payments, determined by adjusting the amount on line 2(a)(1) to value the benefits using the Required Interest Rate. To adjust the value of the benefits, you must use the formula in the "Line 2(b) Procedure" following line 2(b)(3) below.

**Line 2(b)(2) Adjusted Value Of Vested Benefits - Those Not Receiving Payments**

Enter the adjusted present value of vested benefits for participants *not* receiving payments, determined by adjusting the amount on line 2(a)(2) to add benefit accruals for the plan year preceding the premium payment year and to value the benefits using the Required Interest Rate. The adjustment for benefit accruals is 7% of the amount on line 6d(ii) of the Schedule B. To add the benefit accruals and to adjust the value of the benefits using the Required Interest Rate, you must use the formula in the "Line 2(b) Procedure" following line 2(b)(3) (unless you qualify for the Interest Adjustment Relief Rule described below).

**Line 2(b)(3) Total Adjusted Vested Benefits**

Enter the total adjusted vested benefits. This amount is the total of line 2(b)(1) plus line 2(b)(2).

**Line 2(b) Procedure -****How To Compute Adjusted Vested Benefits**

**Relief Rule** If the Required Interest Rate for your plan entered on line 2(b) is equal to or greater than *both* plan interest rates entered on lines 2(a)(1) and 2(a)(2), you do not have to use the formula below to calculate the adjusted value of vested benefits. However, you must adjust the amount entered on line 2(a)(2) by multiplying it by 1.07, the benefit accrual adjustment factor. Enter on line 2(b)(1) the same amount you entered on line 2(a)(1), and enter on line 2(b)(2) the adjusted line 2(a)(2) amount.

If you use this relief rule for line 2(b), you must initial box (c) on Line 10.

**Procedure**

Use the formula below to compute the adjusted value of vested benefits that you must enter on line 2(b)(1), line 2(b)(2) and line 2(b)(3). Enter all interest rates in the formula as in the following example: Enter 6.75 percent as "6.75", not as ".0675".

The formula adjusts the values of vested benefits for retired participants and beneficiaries receiving benefit payments and for other participants not receiving benefits that you entered on line 2(a)(1) and line 2(a)(2) from your 1988 Form 5500, Schedule B. The formula adjusts your plan values to reflect the Required Interest Rate. The formula also adjusts for benefit accruals during the plan year preceding the premium payment year. You may wish to use the spaces provided as a work sheet.

One part of the formula, the expression  $.94^{(RIR - BIR)}$ , may result in a fractional exponent and will result in a negative exponent when your plan interest rate is higher than the Required Interest Rate. You may use an optional procedure to substitute a factor for this expression. See "Line 2(b) Procedure - How To Use Substitution Factors for the term  $.94^{(RIR - BIR)}$ " below.

**Formula for Total Adjusted Vested Benefits (line 2(b)(3)):**

$$VB_{adj} = VB_{6d(i)} \times .94^{(RIR - BIR)} + (VB_{6d(ii)} \times .94^{(RIR - BIR)} \times ((100 + BIA) / (100 + RIR))^{(ARA - 50)})$$

Note: The VB 6d(ii) amount is not the amount entered on line 6d(ii) of the preceding year's Schedule B; it is, rather, the amount entered on line 6d(ii) of the preceding year's Schedule B multiplied by 1.07 (the benefit accrual adjustment factor) to reflect accruals during the preceding plan year.

a. Line 2(b)(1) amount - Adjusted Vested Benefits for retirees and beneficiaries receiving payments.

$$\text{Line 2(b)(1)} = VB_{6d(i)} \times .94^{(RIR - BIR)}$$

b. Line 2(b)(2) amount - Adjusted Vested Benefits for participants not receiving payments.

$$\text{Line 2(b)(2)} = VB_{6d(ii)} \times .94^{(RIR - BIR)} \times ((100 + BIA) / (100 + RIR))^{(ARA - 50)}$$

c. Definitions.

1.  $VB_{adj}$  is the adjusted vested benefits amount (as of the first day of the plan year preceding the premium payment year) under the Alternative Calculation Method . . . . . \$ \_\_\_\_\_
2.  $VB_{6d(i)}$  is the amount entered on line 2(a)(1) . . . . . \$ \_\_\_\_\_
3.  $VB_{6d(ii)}$  is the amount entered on line 2(a)(2) multiplied by 1.07 . . . . . \$ \_\_\_\_\_
4. RIR is the Required Interest Rate entered on line 2 . . . . . % \_\_\_\_\_
5. BIR is the interest rate entered on line 2(a)(1) in the "Interest Rate" column . . . . . % \_\_\_\_\_
6. BIA is the interest rate entered on line 2(a)(2) in the "Interest Rate" column . . . . . % \_\_\_\_\_
7. ARA is the assumed retirement age entered on line 2 . . . . . years \_\_\_\_\_

**Procedure**

How To Use Substitution Factors for the term,  $.94^{(RIR - BIR)}$

You may use "substitution factors" in the Alternative Calculation Method interest rate adjustment formula to replace the term  $.94^{(RIR - BIR)}$ . The use of the factors is not required; it is optional.

The use of the "substitution factors" may slightly overstate the present value of vested benefits and might overstate the amount of the variable rate portion of the premium. The PBGC has rounded all substitution factors up or down to produce the higher value of vested benefits. The impact of this rounding is minimal. At most, the rounding would overstate the value of vested benefits by less than 1%.

The substitution factors are in Appendix 1. Use the substitution factor in Table A when RIR is equal to or greater than BIR rounded to the nearest hundredth. Use the substitution factor in Table B when BIR, rounded to the nearest hundredth, is greater than RIR.

**Line 3 Value of Plan Assets**

**Line 3(a) Value Of Plan Assets As Of Determination Date**

Enter the first day of the 1988 plan year. This is the date as of which you must report the value of plan assets.

Enter the value of assets as reported on the 1988 Schedule B, line 8b, if the date reported on the 1988 Schedule B, line 8b, is the first day of the 1988 plan year. But, if that date is not the first day of the 1988 plan year, enter the value of assets as of the first day of the 1988 plan year, as reported on line 6c of the same Schedule B.

**Line 3(b) Contribution Receivables In Line 3(a)**

Enter the sum of employer and employee contribution receivables that were included in the line 3(a) amount. For plans that file a 1988 Form 5500, this amount is the sum of Item 34b(i)(a) and 34b(ii)(a), "Current value of plan assets, receivables for employer and participant contributions as of the beginning of the plan year."

For plans that do not file a Form 5500, you may either calculate the contribution receivables amount (you must keep a record of your calculations) or you may enter the amount reported on Form 5500C, Item 30b, column (a), "Current value of plan assets, receivables as of the beginning of the plan year." Note: If the Item 30b, column (a), figure includes items in addition to contribution receivables, this will understate the adjusted value of assets you will report on line 3(d).

**Line 3(c) Discounted Paid Contributions**

For plans with fewer than 500 participants, this line is optional; you may go to line 3(d). If you do not complete this line, you may understate the adjusted value of assets you will report on line 3(d). If this would affect the amount of the variable rate premium that the plan owes, you may wish to complete line 3(c).

Enter on line 3(c) the discounted value of those employer and employee contributions paid for plan years prior to the premium payment year that were reported on line 3(b) (because they were included as receivables in the line 3(a) amount) or that were not included (as receivables or otherwise) in the line 3(a) amount. Do not include in line 3(c) any contributions that are for the premium payment year

or any contributions that have not been paid on or before the earlier of the due date for the variable rate portion of the premium or the date that premium is paid.

The contributions must be discounted back to the first day of the 1988 plan year, and the discount rate you must use is the Required Interest Rate (RIR) entered on line 2. To discount your contributions, you must use the formula in the "Line 3 Procedure" below.

**Procedure**

**Line 3 Procedure -  
How To Discount  
Contributions**

You must use the formula below to discount each contribution included in line 3(c) from the date paid back to the date entered on line 3(a). The discounted contributions are entered on line 3(c).

The "discounted contribution" is computed by dividing the contribution paid by the "discount interest rate factor" for the discount period. The computation of the "discount interest rate factor" is based on the Required Interest Rate (RIR) entered on line 2. Thus, for example, if the RIR is 7.36%, "the discount interest rate factor" is 1.0736. The "discount period" is the number of days from the date the contribution was paid back to the date entered on line 3(a). As the exponent in the formula, the "discount period" adjusts the "discount interest rate factor" for periods of different durations. One year is 365/365 or 1. (The formula assumes a 365-day year.)

Discounted Contribution (DC) =

$$\text{Contribution} / \left[ \left( 1 + (\text{RIR} / 100) \right)^{(\text{DP} / 365)} \right]$$

where:

1. RIR is the Required Interest Rate entered on line 2 . . . . . %
2. DP is the discount period expressed as the number of days from the date the contribution was paid back to the date entered on line 3(c); for example, one year and 183 days would be 548 days . . . . .

**Example**

A calendar year plan paying its 1989 premium made a \$1,000 contribution on July 1, 1989 for the 1988 plan year. The discount period is July 1, 1989 to January 1, 1988, or 548 days. The RIR for plan years beginning in January 1989 is 7.21%. When Contribution = \$1,000, RIR = 7.21% and the Discount Period (DP) = 548, the amount of the Discounted Contribution (DC) is computed as follows:

$$\text{DC} = \$1,000 / \left[ \left( 1 + (7.21/100) \right)^{(548 / 365)} \right]$$

$$\text{DC} = \$1,000 / \left[ \left( 1 + 0.0721 \right)^{(1.50137)} \right]$$

$$\text{DC} = \$1,000 / \left[ \left( 1.0721 \right)^{(1.50137)} \right]$$

$$\text{DC} = \$1,000 / 1.11018$$

$$\text{DC} = \$900.75$$

If the discount period for your plan includes a partial year, you may use simple interest for the partial year and this formula for the full year(s), if any, in the discount period.

**Line 3(d) Adjusted Value Of Plan Assets**

Enter the sum of line 3(a) minus line 3(b) plus line 3(c).

**Line 4 Adjusted Unfunded Vested Benefits**

The Adjusted Unfunded Vested Benefits is the excess, if any, of the Total Adjusted Vested Benefits entered on line 2(b)(3) over the Adjusted Plan Assets entered on line 3(d), further adjusted for the passage of time from the determination date entered on line 2 to the last day of the 1988 plan year. To determine Adjusted Unfunded Vested Benefits, use the "Line 4 Procedure" below. You may wish to use the space provided as a work sheet.

Plans with fewer than 500 participants compute the Adjusted Unfunded Vested Benefits by using Step 1 and Step 2 of the "Line 4 Procedure" below and entering the result (UVB<sub>adj</sub>) on line 4.

Plans with 500 or more participants compute the Adjusted Unfunded Vested Benefits by using Step 1, Step 2 and Step 3 of the "Line 4 Procedure" below and entering the result (UVB<sub>adj</sub>) on line 4.

**Procedure**

**Line 4 Procedure -  
How To Compute Adjusted  
Unfunded Vested Benefits**

**Step 1. Unfunded Vested Benefits.**

A. If line 3(d), Adjusted Value of Plan Assets, is equal to or greater than line 2(b)(3), Total Adjusted Vested Benefits, you have no Adjusted Unfunded Vested Benefits; enter \$0 on line 4 and go to line 9.

B. If line 3(d), Adjusted Value of Plan Assets is less than Line 2(b)(3), Adjusted Total Value of Benefits, you do have Total Adjusted Vested Benefits. Compute the amount of Unfunded Vested Benefits as of the determination date entered on line 2 as follows:

1. Total Adjusted Vested Benefits from line 2(b)(3) . . . . . \$ \_\_\_\_\_
2. Minus: Adjusted Value of Plan Assets from line 3(d) . . . . . \$ \_\_\_\_\_
3. Unfunded Vested Benefits (1 minus 2) . . . . . \$ \_\_\_\_\_
4. Go to Step 2

**Step 2. Passage Of Time.**

Adjust the Unfunded Vested Benefits entered above to reflect the passage of time from the determination date entered on line 2 using the following formula:

$$\text{UVB}_{adj} = (\text{VB}_{adj} - \text{A}_{adj}) \times (1 + \text{RIR} / 100)^Y;$$

1. UVB<sub>adj</sub> is the amount of the plan's Adjusted Unfunded Vested Benefits on which the variable rate portion of the premium will be assessed.  
NOTE: Round up to the next \$1,000 and enter on line 4 . . . \$ \_\_\_\_\_
2. VB<sub>adj</sub> is the value of the Total Adjusted Vested Benefits entered on line 2(b)(3) . . . . . \$ \_\_\_\_\_
3. A<sub>adj</sub> is the Adjusted Value Of Plan Assets entered on line 3(d) . . . . . \$ \_\_\_\_\_
4. RIR is the Required Interest Rate entered on line 2 . . . . . %

5. Y is deemed to be equal to 1 (unless the plan year preceding the premium payment year is a short plan year, in which case Y is the number of days in the short plan year (counting both the first day and the last day of the short plan year) divided by 365, expressed as a decimal fraction of 1.0 with two digits to the right of the decimal point) ..... years

If you have a plan with fewer than 500 participants, skip Step 3 below and go to line 5; otherwise, you must proceed to Step 3.

### Step 3. Significant Event Adjustment.

If you have a plan with 500 or more participants, an enrolled actuary must certify to either A or B below by completing the certification on line 11 (including, in particular, box (e) of Line 11) of the Schedule A.

a. No significant event, as described in Part H6. of these instructions, occurred during the plan year preceding the premium payment year. If this is the case, enter UVB<sub>adj</sub> from Step 2 above on line 4.

b. One or more significant events have occurred during the plan year preceding the premium payment year, and the enrolled actuary has made appropriate adjustments to UVB<sub>adj</sub> from Step 2 above to reflect the occurrence of the significant event in accordance with generally accepted actuarial principles and practices. If this is the case, you may use the following worksheet:

1. Enter UVB<sub>adj</sub> from Step 2 above . . . . \$ \_\_\_\_\_
2. Enter the adjustment to UVB<sub>adj</sub> to reflect significant events (if negative, place in parentheses) . . . . . \$ \_\_\_\_\_
3. Add 1 and 2, round up to the next \$1,000, and enter here and on line 4 . . . \$ \_\_\_\_\_

### Line 5 Multiply Line 4 By 0.006

Multiply the Adjusted Unfunded Vested Benefits amount on line 4 by 0.006 and enter on line 5.

### Line 6 Divide Line 5 By The Participant Count

Enter the participant count from Form 1 line 13. Divide the amount on line 5 by this number and enter. Round to the nearest cent. This is the initial per participant variable rate portion of the premium, but it may be reduced by the calculation on line 7.

### Line 7 Per Participant Cap

Enter the standard \$34 per participant cap; or, if the plan is qualified (as described below), you may enter the reduced per participant cap that may be as low as \$19. If the entry on line 6 is less than \$19, there is no need to determine a reduced per participant cap and you should enter \$34 on line 7.

The \$34 per participant cap may be reduced if your plan meets the qualification rules in the "Line 7 Procedure".

The cap reduction is \$3 per plan year for each of the last five plan years beginning before January 1, 1988, in which the plan received the maximum allowable tax deductible contribution under section 404 of the Code.

The most the cap may be reduced is \$15 (\$3 per year times 5 years = \$15), which would reduce the cap from \$34 to \$19.

To determine if your plan qualifies for a cap reduction and the amount of the reduction, you must use the Line 7 Procedure - How To Compute The Reduced Per Participant Cap. You may use the spaces in the procedure as a work sheet. Do not send the work sheet to PBGC. Keep the work sheet (or the numbers computed in it) in your records. PBGC may require that you submit this information at a later date.

#### Procedure

### Line 7 Procedure - How To Compute The Reduced Per Participant Cap

In order to determine if a plan qualifies for the reduction, you must use rules 1 through 5 of this procedure. If the plan qualifies, determine the reduced per participant cap under the steps that follow these rules.

### Rules for Determining Qualification

#### Rule 1. Determination of maximum deductible contribution.

The determination of whether contributions were in an amount not less than the maximum amount allowable as a deduction under section 404 of the Code shall be based on the methods of computing the maximum deductible contribution under section 404, including actuarial assumptions and funding methods, used by the plan and the contributing sponsor or contributing sponsors (provided such assumptions and methods met the requirements for reasonableness under section 412 of the Code) with respect to each of the last five plan years commencing before January 1, 1988.

#### Rule 2. Rounding of *de minimis* amounts.

Any contribution that would have been at least equal to the maximum deductible amount but for the fact that the contribution amount was rounded down, shall be deemed for the purposes of this procedure to be in an amount not less than the maximum deductible amount if the following conditions are met:

A. In the case of maximum deductible amounts up to \$100,000, the contribution amount was rounded down to no less than the next lower multiple of \$100.

B. In the case of maximum deductible amounts greater than \$100,000, the contribution amount was rounded down to no less than the next lower multiple of \$1,000.

#### Rule 3. Defined benefit and defined contribution plans.

There is a limitation on the determination of the maximum deductible contribution for sponsors maintaining both defined benefit and defined contribution plans with common participants.

If a contributing sponsor is subject to the limitation on deductions described in section 404(a)(7)(A) of the Code (relating to total deductions in connection with one or more defined contribution plans and one or more defined benefit plans with common participants in each) and if the contributing sponsor or contributing sponsors made contributions to the plan with respect to which the premium is being determined in an amount less than the maximum deductible amount (determined without regard to the Code section 404(a)(7)(A) limitation), amounts contributed to a defined contribution plan (or plans), or to a defined benefit

plan (or plans) not covered by Title IV of the Act pursuant to section 4021 of the Act, must be disregarded in determining whether the amounts contributed equalled the maximum deductible contribution under section 404 of the Code. If the contributing sponsor maintains more than one defined benefit plan covered by Title IV of the Act pursuant to section 4021 of the Act, the determination shall be made by aggregating the amounts contributed to all such plans and comparing that total to the section 404(a)(7)(A) limitation.

**Rule 4.** When plan year and taxable year do not coincide.

There is a special rule for determining the maximum deductible contribution in certain cases when the plan year and the contributing sponsor's taxable year do not coincide.

If a contributing sponsor determined the maximum deductible contribution for a taxable year by using a weighted average of the maximum deductible contributions for the plan years falling within the taxable year pursuant to 26 CFR § 1.404(a)-14(c)(3), the determination under this procedure of whether the contribution for a plan year was the maximum deductible amount shall be made by aggregating all contributions for that plan year, irrespective of the taxable year in which they were applied. If the total amount of contributions is less than the maximum deductible amount under Code section 404 (without applying the limitation in Code section 404(a)(7)(A)) determined on the basis of the plan year, the contribution shall be treated as being the maximum deductible amount under this procedure only if the portion of the contribution applied in each taxable year in which the plan year fell equalled the maximum deductible amount (with respect to that plan year) for that taxable year under the limitation in section 404(a)(7)(A).

**Rule 5.** Special rule for nonprofit entities.

A plan maintained by a nonprofit entity shall be deemed, for purposes of this procedure, to have received the maximum deductible amount for a plan year if an enrolled actuary certifies that the contributions made to the plan for that plan year were in an amount not less than the maximum amount that would have been allowable as a deduction under section 404 of the Code, as determined under Rule 1 through Rule 4 of this procedure, if the contributing sponsor(s) of the plan was a (were) for-profit entity(ies).

The enrolled actuary must initial the box on line 11(d) if this rule is used.

**Computation Of The  
Reduced Per Participant Cap**

- Step 1.** Check the appropriate box or boxes below to indicate the plan years for which the maximum allowable tax deductible contribution under section 404 of the Code was made to the plan and enter the number of boxes checked:

1983	1984	1985	1986	1987	Total Years
<input type="checkbox"/>	_____				

- Step 2.** Multiply the total years from Step 1 by \$3 and enter here . \$ \_\_\_\_\_

- Step 3.** Per Participant Cap on the variable rate portion of the premium: Subtract the amount

from Step 2 from \$34 and enter here and on line 7 . . . . \$ \_\_\_\_\_

**Line 8 The Lesser Of Line 6 Or 7**

Enter the lesser of line 6 or line 7. This is the per participant variable rate portion of your premium payment.

**Line 9 Variable Rate Portion  
Of The Premium**

Enter on line 9 and on Form 1, line 15(b), the variable rate portion of the premium. You have two alternatives:

(a) If you have a plan with Adjusted Unfunded Vested Benefits shown on line 4, enter the line 8 amount multiplied by the participant count from Form 1, line 13. Also enter the participant count on line 9(a).

(b) If you have a plan that has NO Adjusted Unfunded Vested Benefits shown on line 4, enter \$0.

**Line 10 Plan Administrator Certification**

As plan administrator, you must personally sign and date the certification in the space provided. In addition, if you used the Interest Adjustment Relief Rule (see line 2 instructions), you must initial box (c) on line 10. We may return any filing that does not have your signature.

**Line 11 Enrolled Actuary Certification**

If the plan has 500 or more participants or if the plan uses the special rule for nonprofit entities (see Rule 5 of the "Line 7 Procedure"), an enrolled actuary must personally sign, date and enter his or her enrollment number and address in the space provided on the certification, and must initial box (d) and/or box (e) on line 11, as applicable.

**Subpart 3 NO VESTED PARTICIPANTS**

**Line 1 Filing Method**

If you use the No Vested Participants filing method, you must check the box on line 1(c)(1) and initial line 10(a). Go to line 9.

**Line 9 Variable Rate Portion  
Of The Premium**

Enter \$0.

**Line 10 Plan Administrator Certification**

As plan administrator, you must personally sign and date the certification in the space provided. We may return any filing that does not have your signature. Initial the box on line 10(a).

**Line 11 Enrolled Actuary Certification**

An enrolled actuary's certification is not required under this filing method.

**Subpart 4 SECTION 412(i) PLANS**

**Line 1 Filing Method**

If you use the filing method for section 412(i) plans, you must check the box on line 1(c)(2), initial line 10(b), and go to line 9.

**Line 9 Variable Rate Portion  
Of The Premium**

Enter \$0.

**Line 10 Plan Administrator Certification**

As plan administrator, you must personally sign and date the certification in the space provided. We may return any filing that does not have your signature. Initial the box on line 10(b).

**Line 11 Enrolled Actuary Certification**

An enrolled actuary's certification is not required under this filing method.

**Subpart 5 FULLY FUNDED  
SMALL PLANS****Line 1 Filing Method**

If you use the filing method for fully funded plans with fewer than 500 participants, you must check the box on line 1(c)(3) and an enrolled actuary must complete line 11(b). Go to line 9.

**Line 9 Variable Rate Portion  
Of The Premium**

Enter \$0.

**Line 10 Plan Administrator Certification**

As plan administrator, you must personally sign and date the certification in the space provided. We may return any filing that does not have your signature.

**Line 11 Enrolled Actuary Certification**

An enrolled actuary must complete certification on line 11 and must initial the box on line 11(b).

**Subpart 6 STANDARD TERMINATIONS****Line 1 Filing Method**

If you use the method for plans terminating in standard terminations, you must check the box on line 1(c)(4) and enter the proposed date of plan termination on line 1(c)(4). Go to line 9.

(Note: See Part A2. for rules on when your premium obligation ends.)

**Line 9 Variable Rate Portion  
Of The Premium**

Enter \$0.

**Line 10 Plan Administrator Certification**

As plan administrator, you must personally sign and date the certification in the space provided. We may return any filing that does not have your signature.

**Line 11 Enrolled Actuary Certification**

An enrolled actuary's certification is not required under this filing method.

**Subpart 7 PLANS TERMINATING  
IN DISTRESS OR  
INVOLUNTARY  
TERMINATIONS****Line 1 Filing Method**

If you use the method for plans terminating in a distress or involuntary termination, check the box on line 1(d) and enter the proposed date of termination (in a distress termination) or the date of termination sought by the PBGC (in an involuntary termination). (These dates are both referred to below as the "DOPT".)

(Note: See Part A2. for rules on when your premium obligation ends.)

**Lines 2 Through Line 11**

The line-by-line instructions for lines 2 through 11 of the Schedule A are the same as under the Alternative Calculation Method (See Part I, Subpart 2, of these instructions) subject to the modifications described below. Under this Distress/Involuntary Termination Method, you will generally be using data from a Schedule B for a plan year earlier than the plan year preceding the premium payment year. (If you are able to use the same Schedule B as under the Alternative Calculation Method, which is the 1988 Schedule B for the 1989 premium payment year, the Distress/Involuntary Termination Method and the Alternative Calculation Method are almost identical; the only difference is that the Distress/Involuntary Termination Method may result in a smaller adjustment for accruals during the plan year preceding the premium payment year, since it would adjust only up to the DOPT. See below.) The modifications are generally designed to reflect and to adjust for the fact that the Schedule B data were determined as of an earlier date.

The modifications are as follows:

**Modification 1.**

Substitute the first day of the plan year of the Schedule B you are using for the first day of the Alternative Calculation Method Schedule B year.

**Example** A calendar year plan paying its 1989 premium. The plan has a DOPT of September 1, 1989 and is using data from its 1987 Schedule B to calculate the variable rate portion of its premium. For this plan --

- a. the determination date to be entered on line 2 must be January 1, 1987;
- b. the Plan Value of Vested Benefits to be entered in the "Value" column of line 2(a), as well as the Adjusted Value of Vested Benefits to be entered on line 2(b), must be determined as of January 1, 1987;
- c. the determination date to be entered on line 3 must be January 1, 1987;
- d. the Value of Plan Assets to be entered in line 3(a) must be determined as of January 1, 1987;
- e. the Contribution Receivables to be entered on line 3(b) are those that were included as receivables in the line 3(a) entry as of January 1, 1987;
- f. the Discounted Paid Contributions to be entered on line 3(c) are those contributions for plan years prior to the premium payment year that were either included as receivables, or not included (as receivables or otherwise), in the line 3(a) entry as of January 1, 1987 (provided they were

paid on or before the earlier of the date the 1989 premium is due or paid);

g. the Discounted Paid Contributions to be entered on line 3(c) must be discounted from the date paid back to January 1, 1987;

h. the Adjusted Value of Plan Assets to be entered on line 3(d) must be determined as of January 1, 1987;

i. the Adjusted Unfunded Vested Benefits to be entered on line 4 is determined as of the last day of the plan year preceding the premium payment year, i.e., December 31, 1988;

j. for a plan with 500 or more participants, the Adjusted Unfunded Vested Benefits to be entered on line 4 must reflect any significant events occurring between January 1, 1987, and December 31, 1988.

### Modification 2.

Substitute "the sum of 1 plus the product of .07 times the number of years (rounded to the nearest hundredth of a year) from the date of the Schedule B data to the DOPT for the "1.07 benefit accrual adjustment factor" in the "Line 2(b)(3) Relief Rule" and the interest rate adjustment formula under the "Line 2(b)(3) Procedure."

To compute the number of years, count the number of days from and including the date of the Schedule B data to and including the DOPT and divide by 365.

Under the Alternative Calculation Method, the "1.07 benefit accrual adjustment factor" referred to under the "Line 2(b)(3) Procedure" serves as a surrogate for accruals during the plan year preceding the premium payment year. This surrogate assumes that there has been exactly one year of accruals (e.g., in the case of a calendar year plan paying its 1989 premium, accruals from January 1, 1988, through December 31, 1988). Under the Distress/Involuntary Termination Method, however, the accrual period will run from the date of the Schedule B data to the DOPT.

Using the rule stated in Modification 2, and continuing with the hypothetical plan in Modification 1 --

a. Determine  $VB_{6d(ii)}$  in the "Line 2(b)(3) Procedure" by multiplying the amount entered on line 6d(ii) of the Schedule B you are using by the following benefit accrual adjustment factor (AC) instead of 1.07 --

$$AC = 1 + (.07 \times (\text{the number of days from January 1, 1987 to September 1, 1988}) / 365)$$

$$AC = 1 + (.07 \times 1.67)$$

$$AC = 1 + .12$$

$$AC = 1.12$$

b. If the plan is using the "Line 2(b)(3) Relief Rule", the Schedule A line 2(b)(2) amount is determined by multiplying the Schedule A line 2(a)(2) amount by 1.12. If the plan cannot use the Relief Rule, the  $VB_{6d(ii)}$  amount (e.3. under the "Line 2(b)(3) Procedure") is multiplied by 1.12.

c. Enter the benefit accrual adjustment factor of 1.12 as the accrual factor on Schedule A line 2.

### Modification 3.

Substitute "the number of years (rounded to the nearest hundredth of a year) between the date of the Schedule B data and the last day of the plan year preceding the premium payment year" for the exponent "Y" in the time adjustment formula under the "Line 4 Procedure."

To compute the number of years, count the number of days from and including the date of the Schedule B data to and including the last day of the plan year preceding the premium payment year and divide by 365 in Step 2 of the "Line 4 Procedure."

Under the Alternative Calculation Method, the exponent, "Y," in the time adjustment formula in Step 2 of the "Line 4 Procedure" represents the length of time from the date of the Schedule B data to the last day of the plan year preceding the premium payment year. Because that length of time is generally exactly one year under the Alternative Calculation Method, Y is defined simply as (generally) being "equal to 1". The length of time under the Distress/Involuntary Termination Method will generally be longer than 1 year. Thus, using the rule stated in Modification 3, and continuing with the hypothetical plan in Modification 1, "Y" would equal 2 (the number of years between January 1, 1987, and December 31, 1988).

**APPENDIX 1 Optional Substitution Factors for the term ".94(RIR-BIR)"**

You may use optional "substitution factors" in the Alternative Calculation Method interest rate adjustment formula to replace the term ".94(RIR-BIR)". The use of the factors is not required; it is optional. The instructions for the formula and for use of the tables below are in Part I, Subpart 2, Line 2.

Use the substitution factor in Table A when RIR is equal to or greater than BIR rounded to the nearest hundredth. Use the substitution factor in Table B when BIR, rounded to the nearest hundredth, is greater than RIR.

**TABLE A**  
When RIR Is Equal To Or Greater Than BIR

If RIR minus BIR (rounded to nearest hundredth) is:		The substitution factor is --	If RIR minus BIR (rounded to nearest hundredth) is:		The substitution factor is --
At least	But less than		At least	But less than	
0.00	0.10	1.0000	3.00	3.10	0.8306
0.10	0.20	0.9938	3.10	3.20	0.8255
0.20	0.30	0.9877	3.20	3.30	0.8204
0.30	0.40	0.9816	3.30	3.40	0.8153
0.40	0.50	0.9756	3.40	3.50	0.8103
0.50	0.60	0.9695	3.50	3.60	0.8053
0.60	0.70	0.9636	3.60	3.70	0.8003
0.70	0.80	0.9576	3.70	3.80	0.7954
0.80	0.90	0.9517	3.80	3.90	0.7905
0.90	1.00	0.9458	3.90	4.00	0.7856
1.00	1.10	0.9400	4.00	4.10	0.7807
1.10	1.20	0.9342	4.10	4.20	0.7759
1.20	1.30	0.9284	4.20	4.30	0.7711
1.30	1.40	0.9227	4.30	4.40	0.7664
1.40	1.50	0.9170	4.40	4.50	0.7617
1.50	1.60	0.9114	4.50	4.60	0.7570
1.60	1.70	0.9057	4.60	4.70	0.7523
1.70	1.80	0.9002	4.70	4.80	0.7477
1.80	1.90	0.8946	4.80	4.90	0.7430
1.90	2.00	0.8891	4.90	5.00	0.7385
2.00	2.10	0.8836	5.00	5.10	0.7339
2.10	2.20	0.8781	5.10	5.20	0.7294
2.20	2.30	0.8727	5.20	5.30	0.7249
2.30	2.40	0.8673	5.30	5.40	0.7204
2.40	2.50	0.8620	5.40	5.50	0.7160
2.50	2.60	0.8567	5.50	5.60	0.7115
2.60	2.70	0.8514	5.60	5.70	0.7072
2.70	2.80	0.8461	5.70	5.80	0.7028
2.80	2.90	0.8409	5.80	5.90	0.6985
2.90	3.00	0.8357	5.90	6.00	0.6942

**TABLE B**  
When BIR Is Greater Than RIR

If BIR minus RIR (rounded to nearest hundredth) is:		The substitution factor is --	If BIR minus RIR (rounded to nearest hundredth) is:		The substitution factor is --
At least	But less than		At least	But less than	
0.01	0.10	1.0062	3.00	3.10	1.2114
0.10	0.20	1.0125	3.10	3.20	1.2190
0.20	0.30	1.0187	3.20	3.30	1.2265
0.30	0.40	1.0251	3.30	3.40	1.2341
0.40	0.50	1.0314	3.40	3.50	1.2418
0.50	0.60	1.0378	3.50	3.60	1.2495
0.60	0.70	1.0443	3.60	3.70	1.2573
0.70	0.80	1.0507	3.70	3.80	1.2651
0.80	0.90	1.0573	3.80	3.90	1.2729
0.90	1.00	1.0638	3.90	4.00	1.2808
1.00	1.10	1.0704	4.00	4.10	1.2888
1.10	1.20	1.0771	4.10	4.20	1.2968
1.20	1.30	1.0838	4.20	4.30	1.3048
1.30	1.40	1.0905	4.30	4.40	1.3129
1.40	1.50	1.0973	4.40	4.50	1.3211
1.50	1.60	1.1041	4.50	4.60	1.3293
1.60	1.70	1.1109	4.60	4.70	1.3375
1.70	1.80	1.1178	4.70	4.80	1.3458
1.80	1.90	1.1248	4.80	4.90	1.3542
1.90	2.00	1.1317	4.90	5.00	1.3626
2.00	2.10	1.1388	5.00	5.10	1.3710
2.10	2.20	1.1458	5.10	5.20	1.3795
2.20	2.30	1.1529	5.20	5.30	1.3881
2.30	2.40	1.1601	5.30	5.40	1.3967
2.40	2.50	1.1673	5.40	5.50	1.4054
2.50	2.60	1.1745	5.50	5.60	1.4141
2.60	2.70	1.1818	5.60	5.70	1.4229
2.70	2.80	1.1892	5.70	5.80	1.4317
2.80	2.90	1.1965	5.80	5.90	1.4406
2.90	3.00	1.2040	5.90	6.00	1.4495

**Codes for Principal Business Activity and Principal Product or Service.**

These industry titles and definitions are based, in general, on the Enterprise Standard Industrial Classification system developed by the Office of Management and Budget, Executive Office of the President, to classify enterprises by type of activity in which they are engaged. The system follows closely the Standard Industrial Classification used to classify establishments.

**AGRICULTURE, FORESTRY, AND FISHING**

Code  
Farms:  
0120 Field crop.  
0150 Fruit, tree nut, and vegetable.  
0180 Horticultural specialty.  
0230 Livestock.  
0270 Animal specialty.  
**Agricultural services and forestry:**  
0740 Veterinary services.  
0750 Animal services, except veterinary.  
0780 Landscape and horticultural services.  
0790 Other agricultural services.  
0800 Forestry.  
**Fishing, hunting, and trapping:**  
0930 Commercial fishing, hatcheries and preserves.  
0970 Hunting, trapping, and game propagation.

**MINING**

**Metal mining:**  
1010 Iron ores.  
1070 Copper, lead and zinc, gold and silver ores.  
1098 Other metal mining.  
1150 Coal mining.  
**Oil and gas extraction:**  
1330 Crude petroleum, natural gas, and natural gas liquids.  
1380 Oil and gas field services.  
**Nonmetallic mineral (except fuels) mining:**  
1430 Dimension, crushed and broken stone; sand and gravel.  
1498 Other nonmetallic minerals, except fuels.

**CONSTRUCTION**

**General building contractors and operative builders:**  
1510 General building contractors.  
1531 Operative builders.  
**Heavy construction contractors:**  
1611 Highway and street construction.  
1620 Heavy construction, except highway.  
**Special trade contractors:**  
1711 Plumbing, heating, and air conditioning.  
1721 Painting, paper hanging, and decorating.  
1731 Electrical work.  
1740 Masonry, stonework, and plastering.  
1750 Carpentering and flooring.  
1761 Roofing and sheet metal work.  
1771 Concrete work.  
1781 Water well drilling.  
1790 Miscellaneous special trade contractors.

**MANUFACTURING**

**Food and kindred products:**  
2010 Meat products.  
2020 Dairy products.  
2030 Preserved fruits and vegetables.  
2040 Grain mill products.  
2050 Bakery products.  
2060 Sugar and confectionery products.  
2081 Malt liquors and malt.  
2088 Alcoholic beverages, except malt liquors and malt.  
2089 Bottled soft drinks, and flavoring.  
2096 Other food and kindred products.  
2100 Tobacco manufacturers.

**Textile mill products:**

2228 Weaving mills and textile finishing.  
2250 Knitting mills.  
2298 Other textile mill products.

**Apparel and other textile products:**

2315 Men's and boy's clothing.  
2345 Women's and children's clothing.  
2388 Hats, caps, millinery, fur goods, and other apparel and accessories.

**Lumber and wood products, except furniture:**

2415 Logging camps and logging contractors, sawmills and planing mills.  
2430 Millwork, plywood, and related products.

2498 Other wood products, including wood buildings and mobile homes.

**2500 Furniture and fixtures.****Paper and allied products:**

2625 Pulp, paper, and board mills.

2699 Other paper products.

**Printing, publishing, and allied industries:**

2710 Newspapers.  
2720 Periodicals.  
2735 Books, greeting cards, and misc. publishing.  
2799 Commercial and other printing, and printing trade services.

**Chemicals and allied products:**

2815 Industrial chemicals, plastics materials and synthetics.  
2830 Drugs.  
2840 Soap, cleaners, and toilet goods.  
2850 Paints and allied products.  
2898 Agricultural and other chemical products.

**Petroleum refining and related industries (including those integrated with extraction):**

2910 Petroleum refining (including those integrated with extraction).  
2998 Other petroleum and coal products.  
**Rubber and misc. plastics products:**  
3050 Rubber products; plastics footwear, hose and belting.  
3070 Misc. plastics products.

**Leather and leather products:**

3140 Footwear, except rubber.  
3198 Other leather and leather products.  
**Stone, clay, glass, and concrete products:**

3225 Glass products.  
3240 Cement, hydraulic.  
3270 Concrete, gypsum, and plaster products.  
3298 Other nonmetallic mineral products.

**Primary metal industries:**

3370 Ferrous metal industries; misc. primary metal products.

3380 Nonferrous metal industries.

**Fabricated metal products, except machinery and transportation equipment:**

3410 Metal cans and shipping containers.  
3428 Cutlery, hand tools, and hardware; screw machine products, bolts, and similar products.

3430 Plumbing and heating, except electric and warm air.

3440 Fabricated structural metal products.

3460 Metal forgings and stampings.

3470 Coating, engraving, and allied services.

3480 Ordnance and accessories, except vehicles and guided missiles.

3490 Misc. fabricated metal products.

**Machinery, except electrical:**

3520 Farm machinery.

3530 Construction, mining, and materials handling machinery and equipment.

3540 Metalworking machinery.

3550 Special industry machinery, except metalworking machinery.

3560 General industrial machinery.

3570 Office, computing, and accounting machines.

3598 Engines and turbines, service industry machinery, and other machinery, except electrical.

**Electrical and electronic machinery, equipment, and supplies:**

3630 Household appliances.

3665 Radio, television, and communication equipment.

3670 Electronic components and accessories.

3698 Other electric equipment.

**Transportation equipment:**

3710 Motor vehicles and equipment.

3725 Aircraft, guided missiles and parts.

3730 Ship and boat building and repairing.

3798 Other transportation equipment.

**Measuring and controlling instruments; photographic and medical goods, watches and clocks:**

3815 Scientific instruments and measuring devices; watches and clocks.

3845 Optical, medical, and ophthalmic goods.

3860 Photographic equipment and supplies.

3998 Other manufacturing products.

**TRANSPORTATION, COMMUNICATION, ELECTRIC, GAS, AND SANITARY SERVICES****Transportation:**

4000 Railroad transportation.

**Local and interurban passenger transit:**

4121 Taxicabs.

4189 Other passenger transportation.

**Trucking and warehousing:**

4210 Trucking, local and long distance.

4289 Public warehousing and trucking terminals.

**Other transportation including transportation services:**

4400 Water transportation.

4500 Transportation by air.

4600 Pipelines, except natural gas.

4722 Passenger transportation arrangement.

4723 Freight transportation arrangement.

4799 Other transportation services.

**Communication:**

4825 Telephone, telegraph, and other communication services.

4830 Radio and television broadcasting.

**Electric, gas, and sanitary services:**

4910 Electric services.

4920 Gas production and distribution.

4930 Combination utility services.

4990 Water supply and other sanitary services.

**WHOLESALE TRADE****Durable:**

- 5010 Motor vehicles and automotive equipment.
  - 5020 Furniture and home furnishings.
  - 5030 Lumber and construction materials.
  - 5040 Sporting, recreational, photographic, and hobby goods, toys, and supplies.
  - 5050 Metals and minerals, except petroleum and scrap.
  - 5060 Electrical goods.
  - 5070 Hardware, plumbing and heating equipment.
  - 5083 Farm machinery and equipment.
  - 5089 Other machinery, equipment, and supplies.
  - 5098 Other durable goods.
- Nondurable:**
- 5110 Paper and paper products.
  - 5129 Drugs, drug proprietaries, and druggists' sundries.
  - 5130 Apparel, piece goods, and notions.
  - 5140 Groceries and related products, except meats and meat products.
  - 5147 Meats and meat products.
  - 5150 Farm-product raw materials.
  - 5160 Chemicals and allied products.
  - 5170 Petroleum and petroleum products.
  - 5180 Alcoholic beverages.
  - 5190 Misc. nondurable goods.

**RETAIL TRADE****Building materials, hardware, garden supply, and mobile home dealers:**

- 5211 Lumber and other building materials dealers.
  - 5231 Paint, glass, and wallpaper stores.
  - 5251 Hardware stores.
  - 5261 Retail nurseries and garden stores.
  - 5271 Mobile home dealers.
- General merchandise:**
- 5331 Variety stores.
  - 5398 Other general merchandise stores.
- Food stores:**
- 5411 Grocery stores.
  - 5420 Meat and fish markets and freezer provisioners.
  - 5431 Fruit stores and vegetable markets.
  - 5441 Candy, nut, and confectionery stores.
  - 5451 Dairy products stores.
  - 5460 Retail bakeries.
  - 5490 Other food stores.
- Automotive dealers and service stations:**
- 5511 New car dealers (franchised).
  - 5521 Used car dealers.
  - 5531 Auto and home supply stores.
  - 5541 Gasoline service stations.
  - 5551 Boat dealers.
  - 5561 Recreational vehicle dealers.
  - 5571 Motorcycle dealers.
  - 5599 Aircraft and other automotive dealers.
- Apparel and accessory stores:**
- 5611 Men's and boy's clothing and furnishings.
  - 5621 Women's ready-to-wear stores.
  - 5631 Women's accessory and specialty stores.
  - 5641 Children's and infants' wear stores.
  - 5651 Family clothing stores.
  - 5661 Shoe stores.
  - 5681 Furriers and fur shops.
  - 5699 Other apparel and accessory stores.
- Furniture, home furnishings, and equipment stores:**
- 5712 Furniture stores.
  - 5713 Floor covering stores.
  - 5714 Drapery, curtain, and upholstery stores.
  - 5719 Home furnishings, except appliances.
  - 5722 Household appliance stores.
  - 5732 Radio and television stores.
  - 5733 Music stores.

**Eating and drinking places:**

- 5812 Eating places.
  - 5813 Drinking places.
- Miscellaneous retail stores:**
- 5912 Drug stores and proprietary stores.
  - 5921 Liquor stores.
  - 5931 Used merchandise stores.
  - 5941 Sporting goods stores and bicycle shops.
  - 5942 Book stores.
  - 5943 Stationery stores.
  - 5944 Jewelry stores.
  - 5945 Hobby, toy, and game shops.
  - 5946 Camera and photographic supply stores.
  - 5947 Gift, novelty, and souvenir shops.
  - 5948 Luggage and leather goods stores.
  - 5949 Sewing, needlework, and piece goods stores.
  - 5961 Mail order houses.
  - 5962 Merchandising machine operators.
  - 5963 Direct selling organizations.
  - 5982 Fuel and ice dealers (except fuel oil and bottled gas dealers).
  - 5983 Fuel oil dealers.
  - 5984 Liquefied petroleum gas (bottled gas).
  - 5992 Florists.
  - 5993 Cigar stores and stands.
  - 5994 News dealers and news-stands.
  - 5996 Other miscellaneous retail stores.

**FINANCE, INSURANCE AND REAL ESTATE****Banking:**

- 6030 Mutual savings banks.
  - 6060 Bank holding companies.
  - 6090 Banks, except mutual savings banks and bank holding companies.
- Credit agencies other than banks:**
- 6120 Savings and loan associations.
  - 6140 Personal credit institutions.
  - 6150 Business credit institutions.
  - 6199 Other credit agencies.
- Security, commodity brokers, dealers, exchanges, and services:**
- 6212 Security underwriting syndicates.
  - 6218 Security brokers and dealers, except underwriting syndicates.
  - 6299 Commodity contracts brokers and dealers; security and commodity exchanges; and allied services.

**Insurance:**

- 6355 Life insurance.
- 6356 Mutual insurance, except life or marine and certain fire or flood insurance companies.
- 6359 Other insurance companies.
- 6411 Insurance agents, brokers, and services.

**Real Estate:**

- 6511 Real estate operators (except developers) and lessors of buildings.
  - 6516 Lessors of mining, oil and similar property.
  - 6518 Lessors of railroad property and other real property.
  - 6531 Real estate agents, brokers and managers.
  - 6541 Title abstract offices.
  - 6552 Subdividers and developers, except cemeteries.
  - 6553 Cemetery subdividers and developers.
  - 6599 Other real estate.
  - 6611 Combined real estate, insurance, loans and law offices.
- Holding and other investment companies:**
- 6742 Regulated investment companies.
  - 6743 Real estate investment companies.
  - 6744 Small business investment companies.
  - 6749 Holding and other investment companies, except bank holding companies.

**SERVICES****Hotels and other lodging places:**

- 3012 Hotels.
  - 7013 Motels, motor motels, and tourist courts.
  - 7021 Rooming and boarding houses.
  - 7032 Sporting and recreational camps.
  - 7033 Trailer parks and camp sites.
  - 7041 Organizational hotels and lodging houses on a membership basis.
- Personal services:**
- 7215 Coin-operated laundries and dry cleaning.
  - 7219 Other laundry, cleaning, and garment services.
  - 7221 Photographic studios, portrait.
  - 7231 Beauty shops.
  - 7241 Barber shops.
  - 7251 Shoe repair and hat cleaning shops.
  - 7261 Funeral services and crematories.
  - 7299 Miscellaneous personal services.

**Business services:**

- 7310 Advertising.
  - 7340 Services to buildings.
  - 7370 Computer and data processing services.
  - 7392 Management, consulting, and public relations services.
  - 7394 Equipment rental and leasing.
  - 7398 Other business services.
- Automotive repair and services:**
- 7510 Automotive rentals and leasing, without drivers.
  - 7520 Automobile parking.
  - 7531 Automobile top and body repair shops.
  - 7538 General automobile repair shops.
  - 7539 Other automotive repair shops.
  - 7540 Automotive services, except repair.
- Miscellaneous repair services:**
- 7622 Radio and TV repair shops.
  - 7628 Electrical repair shops, except radio and TV.
  - 7641 Reupholstery and furniture repair.
  - 7680 Other miscellaneous repair shops.

**Motion pictures:**

- 7812 Motion picture production, distribution, and services.
- 7830 Motion picture theaters.

**Amusement and recreation services:**

- 7920 Producers, orchestras, and entertainers.
- 7932 Billiard and pool establishments.
- 7933 Bowling alleys.
- 7980 Other amusement and recreation services.

**Medical and health services:**

- 8011 Offices of physicians.
- 8021 Offices of dentists.
- 8031 Offices of osteopathic physicians.
- 8041 Offices of chiropractors.
- 8042 Offices of optometrists.
- 8048 Registered and practical nurses.
- 8050 Nursing and personal care facilities.
- 8060 Hospitals.
- 8071 Medical laboratories.
- 8072 Dental laboratories.
- 8098 Other medical and health services.

**Other Services:**

- 8111 Legal services.
- 8200 Educational services.
- 8911 Engineering and architectural services.
- 8932 Certified public accountants.
- 8933 Other accounting, auditing, and bookkeeping services.
- 8999 Other services, not elsewhere classified.

**TAX-EXEMPT ORGANIZATIONS**

- 9002 Church plans making an election under section 410(d) of the Internal Revenue Code.
- 9319 Other tax-exempt organizations.
- 9904 Government instrumentality or agency.

Forms and instructions may be obtained through the following offices of the Pension and Welfare Benefits Administration (PWBA) of the U.S. Department of Labor:

**CALIFORNIA**  
Los Angeles 90012  
3660 Wilshire Boulevard  
(213) 252-7556

San Francisco 94119-3455  
71 Stevenson Street  
(415) 556-7170

**DISTRICT OF COLUMBIA**  
Washington, D.C. 20006  
1730 K Street, NW  
(202) 254-7013

**FLORIDA**  
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111 NW 183rd Street  
(305) 350-4611

**GEORGIA**  
Atlanta 30367  
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(404) 347-4090

**ILLINOIS**  
Chicago 60604  
175 W. Jackson Boulevard  
(312) 353-0900

**KENTUCKY**  
Fort Wright 41011  
1885 Dixie Highway  
(606) 292-3121

**MASSACHUSETTS**  
Boston 02109  
Suite L2 J.W. McCormack  
POCH Building  
(617) 223-9837

**MICHIGAN**  
Detroit 48226  
231 W. Lafayette Street  
(313) 226-7450

**MISSOURI**  
Kansas City 64106  
911 Walnut Street  
(816) 374-5131

**NEW YORK**  
New York 10278  
26 Federal Plaza  
(212) 264-4831

**PENNSYLVANIA**  
Philadelphia 19104  
3535 Market Street  
(215) 596-1134

**TEXAS**  
Dallas 75202  
525 Griffin Street  
(214) 767-6831

**WASHINGTON**  
Seattle 98174  
909 First Avenue  
(206) 442-4244

All forms and payments should be mailed to:

Pension Benefit Guaranty Corporation, P.O. Box 105655, Atlanta, Georgia 30348-5655

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OSD (37500)  
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Please send a bulk order:  
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TO:

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**SECURITIES AND EXCHANGE  
COMMISSION**

[File No. 1-8593]

**Issuer Delisting; Application To  
Withdraw From Listing A.L.  
Laboratories, Inc. Class A Common  
Stock, \$.20 Par Value**

June 9, 1989.

A.L. Laboratories, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's Common Stock recently was listed on the New York Stock Exchange ("NYSE"). Trading in the Company's stock on the NYSE commenced on May 30, 1989. In making decision to withdraw its Common Stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its Common Stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before June 30, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 89-14441 Filed 6-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16995; 812-7060]

**Cowen Funds, Inc., Standby Reserve  
Fund, Inc., Standby Tax-Exempt  
Reserve Fund, Inc. and Cowen & Co.;  
Application**

June 9, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

*Applicant:* Cowen Funds, Inc., Standby Reserve Fund, Inc., Standby Tax-Exempt Reserve Fund, Inc. and Cowen & Co. ("Applicants").

*Relevant 1940 Act Sections:* Exemption requested under section 11(a) from the provisions of section 11(a) of the Act.

*Summary of Application:* Applicants seek approval of offers to exchange certain shares on a basis that may be at other than their respective net assets values at the time of exchange.

*Filing Date:* The application was filed on July 5, 1988, amendments were filed on April 21, 1989 and on May 22, 1989.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 5, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Financial Square, New York, New York 10005-3597.

**FOR FURTHER INFORMATION CONTACT:** Cecilia C. Kalish, Staff Attorney (202) 272-3035 or Stephanie M. Monaco, Branch Chief (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

**Applicants' Representations**

1. The application states that Applicants request an order pursuant to section 11(a) of the Act exempting Applicants from section 11(a) of the Act to the extent necessary to permit exchanges of shares of Cowen Opportunity Fund (the "Fund"), a series of Cowen Funds, Inc. (the "Company"), for shares of Standby Reserve Fund, Inc. and Standby Tax-Exempt Reserve Fund, Inc., money market mutual funds for which Cowen & Co. ("Cowen") serves as distributor and investment manager, on a basis that may be at other than their respective net asset values at the time of the exchange. Applicants request that any order issued by the SEC in response to the application also be applicable to any other series offered by the Company and any investment companies for which Cowen or an affiliate thereof in the future may serve as investment manager or distributor, provided that the shares are sold on a no-load basis or with a front-end sales charge in a manner substantially similar to the manner described herein with respect to the Fund.

2. Applicants represent that the Company is a registered, open-end, diversified management investment company incorporated under the laws of the State of Maryland. Shares of the Fund are offered by Cowen, which is registered with the SEC as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940, as amended. As distributor of the shares of the Fund, Cowen maintains a continuous public offering of shares of the Fund at its current net asset value plus a maximum sales charge equal to 4.85% of the public offering price (5.10% of the net amount invested). In addition to serving as the Fund's distributor, Cowen, through its investment management division, Cowen Asset Management, also serves as investment manager of the Fund.

3. Applicants represent that the exchange offers will operate consistently with revised proposed Rule 11a-3 as it currently exists, and the exchange offers will be amended, if necessary to be consistent with the Rule as it may be further revised and adopted.

4. Applicants acknowledge that the grant of the order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level or form of charges imposed by Cowen or the Fund on investors other than the assessment of sales charges and an administrative fee

on exchanges, as contemplated by revised proposed Rule 11a-3. In addition, the Applicants will comply with all provisions of law, including any regulations promulgated by either the SEC or the National Association of Securities Dealers, Inc., applicable to such charges.

#### Applicants' Conditions

Applicants will comply with the following conditions:

1. Applicants will comply with the provisions of revised proposed Rule 11a-3 under the Act as it currently exists and as it may be further revised or adopted.

2. Applicants will obtain an amended order prior to any modification of the exchange offer in a manner inconsistent with the provisions of revised proposed Rule 11a-3 under the Act as it currently exists and as it may be further revised or adopted, except that an amended order is not required to terminate the exchange offer.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 89-14405 Filed 6-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16994; 812-7297]

#### Schroder Capital Funds, Inc., et al. Application

June 9, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicants:* Schroder Capital Funds, Inc. ("Schroder Capital"), Fund Source, Schroder Capital Management International Inc. ("Schroder") and Schroder Holdings, Inc. (collectively, the "Applicants").

*Relevant 1940 Act Sections:* Order requested under section 17(b) that would exempt certain proposed transactions from the provisions of section 17(a).

*Summary of Application:* Applicants seek an order permitting certain transactions under which two newly created series of Schroder Capital would each acquire the respective assets and liabilities of one of two series of Fund Source, International Equity Trust and Global Bond Trust (the "Fund Source Funds"), in exchange for shares of the applicable series of Schroder Capital, which shares would be distributed in

liquidation to the shareholders of the applicable Fund Source series.

*Filing Date:* The application was filed on April 14, 1989, and was amended and restated on May 19, 1989. An additional amendment, described in a letter to the staff from Applicants' counsel dated June 8, 1989, and the substance of which is thus included herein, will be filed during the notice period.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 5, 1989, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Mark J. Smith, Schroder Capital Management International Inc., 787 Seventh Avenue, New York, New York 10019.

#### FOR FURTHER INFORMATION CONTACT:

Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

#### Applicants' Representations

1. Schroder Capital, a Maryland corporation, and Fund Source, a Massachusetts business trust (collectively, the "Funds"), are series companies registered under the 1940 Act as open-end management investment companies. Schroder is the investment adviser to the Fund Source Funds and the one existing series of Schroder Capital. An affiliate of Schroder, Schroder Holdings, Inc., owns 100% of the total outstanding voting securities of Global Bond Trust.

2. Applicants propose that two newly created series of Schroder Capital each acquire all of the respective assets (consisting of securities and cash) and

liabilities of one of the Fund Source Funds in exchange for shares of the common stock of the applicable Schroder Capital series. Applicants seek an exemption under section 17(b) from the provisions of section 17(a) to permit the transactions necessary to effect the proposed reorganization. Consummation of the reorganization is also subject to other conditions, including approval by the shareholders of the Fund Source Funds and receipt of an opinion of counsel as to tax matters.

3. All series of Fund Source, including the Fund Source Funds, are administered and distributed by Furman Selz Mager Dietz & Birney Incorporated. Following the proposed transaction, Schroder and its affiliates would administer and distribute the Fund Source Funds; provided that the Fund Source Funds would be self-distributed using Schroder personnel until such time as Schroder Capital Distributors, Inc., a wholly owned subsidiary of Schroder, is fully qualified as a registered broker-dealer.

4. The purpose of the proposed reorganization is to place three series that are currently advised by Schroder within a single investment company, in which all series will be advised, distributed and administered by Schroder or an affiliated company of Schroder. Applicants believe that being part of an investment company in which all portfolios are advised, administered and distributed by Schroder and its affiliated companies would simplify the administrative, management and distribution functions of the Fund Source Funds. As a result, Applicants expect that per share expenses would be reduced and that certain management and trading functions would be rendered more efficient. Applicants also expect that the reputation and expertise of Schroder and its affiliated companies in international investment management could be better employed to the benefit of the Fund Source Funds if they served as administrator and distributor as well as investment adviser.

5. Under an Agreement and Plan of Reorganization between Schroder Capital and Fund Source, Schroder Capital would create two additional series. One series would have investment objectives and policies identical to International Equity Trust. The other series would have objectives and policies identical to Global Bond Trust. Each of the new series of Schroder Capital would acquire all of the assets, subject to all of the liabilities, of the corresponding Fund Source Fund in exchange for shares of common stock

of the appropriate series of Schroder Capital.

6. Following the exchange of the Fund Source Funds' assets for Schroder Capital shares, Fund Source would terminate its two series previously represented by the Fund Source Funds. The Fund Source Funds would make a liquidating distribution of the shares of Schroder Capital by instructing Schroder Capital to record each Fund Source Fund shareholder as the record holder of an identical number of shares of the applicable series of Schroder Capital. There would be no adjustment reflecting unrealized appreciation or depreciation, because, under applicable tax law, Schroder Capital would have the same basis as the Fund Source Funds in the assets it received in the reorganization.

7. Each party to the reorganization would bear its own expenses. However, both of the Fund Source Funds are operated under expense limitations that have resulted in waivers of advisory and administrative fees in substantial amounts. These expense limitations would be in effect when any expenses of the reorganization are incurred. The Funds' expense levels are currently well in excess of the expense limitations, and will be for the foreseeable future. As a result, the Funds will not incur any additional expense because of the reorganization.

8. As of March 31, 1989, Fund Source's series had net assets of \$457,553,000, and Global Bond Trust and International Equity Trust had net assets of \$5,192,000 and \$36,678,000, respectively. As of March 31, 1989, the net assets of the single existing series of Schroder Capital, Schroder U.S. Equity Fund, were \$23,541,098.

9. Although the Fund Source Funds would become part of a series investment company with smaller total net assets, Applicants believe that no material or significant disadvantages to the Funds would result. First, Schroder expects to be able to reduce per share expenses of each Fund Source Fund following the reorganization without sacrificing performance, and has already negotiated a new custodial contract with lower fee levels to take effect after the reorganization. Second, because of the small size of the Fund Source Funds and because they operate under the expense limitations, no economies related to the sharing of expenses of a series company are currently realized by the Fund Source Fund. Finally, Applicants believe that even disregarding the expense limitations, the expense of the Fund Source Funds

would not be affected materially by the reorganization.

10. Rule 17a-8 provides, in pertinent part, that a merger, consolidation or sale of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser, common directors, and/or common officers shall be exempt from the provisions of section 17(a) if the directors of each such company, including a majority of the directors that are not interested persons of any participating investment company, determine:

a. That participation in the transaction is in the best interest of that company; and

b. That the interests of the existing shareholders of that registered investment company will not be diluted as a result of its effecting the transaction;

*provided*; That such findings, and the basis on which they are made, are recorded fully in the minute books of each company.

11. Applicants submit that the proposed transactions would be exempt from the provisions of section 17(a) by virtue of Rule 17a-8 under the 1940 Act but for the ownership of Global Bond Trust shares by an affiliated person of Schroder. Accordingly, Schroder Capital and Fund Source are affiliated by a reason other than a common investment adviser, common director and/or common officers and the Rule 17a-8 exemption is not available.

12. The trustees of Fund Source and the Directors of Schroder Capital have made the determinations which would have been required under Rule 17a-8, which have been or will be recorded fully in the minutes of Fund Source and Schroder Capital. The trustees of Fund Source, including the non-interested trustees, considered the following factors, among others: (a) The capabilities and resources of Schroder and its affiliated companies in investment management, marketing and shareholder servicing; (b) current and projected expense ratios of the Fund Source Funds; (c) the terms and conditions of the reorganization and whether dilution of shareholders interests would result; (d) the tax consequences of the reorganization; (e) Schroder's prior investment company business and its commitment to maintain and enhance its present position; and (f) the prospect of

enhanced administration and distribution. The directors of Schroder Capital, including the non-interested directors, considered the following factors, among others: (a) The fact that Schroder had been recapitalized as a series company to offer shareholders investment alternatives and possible economies of scale; (b) that the investment objectives, policies and restrictions, and the assets and liabilities, or Schroder U.S. Equity Fund would not be affected; and (c) that the reorganization would not result in any tax consequences or changes in services to Schroder U.S. Equity Fund or its shareholders.

#### Applicants' Conditions

Applicants consent to the inclusion of the following items as express conditions to any order issued on the application:

1. The Fund Source Funds will be advised, administered and distributed for at least one year subsequent to the reorganization at the same annual fee rates, and under substantially identical contractual terms, as they are being advised, administered and distributed prior to the reorganization.

2. Expense limitations at least as restrictive as those currently in effect for each of the Fund Source Funds will remain in effect for a period of at least one year subsequent to the reorganization.

3. Schroder will waive all or a portion of its fees for each of the Fund Source Funds for any fiscal year in which reorganization expenses are incurred, and any reorganization expense incurred by either such Fund shall not result in an increase in its total annual expenses.

Applicants submit that, in accordance with section 17(b) of the 1940 Act, the terms of the proposed transaction are reasonable and fair and do not involve overreaching by any of the Applicants or any affiliate of Schroder, and that the proposed transaction is consistent with the investment policies of each Fund Applicant and the purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 89-14406 Filed 6-16-89; 8:45 am]

BILLING CODE 8010-01-M

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration**

[Summary Notice No. PE-89-25]

**Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before: July 10, 1989.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 3, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 12, 1989.

Deborah E. Swank,

Acting Manager, Program Management Staff,  
Office of the Chief Counsel.

**Petitions for Exemption**

**Docket No.:** 22469

**Petitioner:** Parks College of Saint Louis University

**Regulations Affected:** 14 CFR Part 141, Appendixes A, C, D, and F

**Description of Relief Sought:** To extend Exemption No. 3495, as amended, that allows petitioner to train students to a performance standard rather than minimum flight time requirements, except for solo cross country. Exemption No. 3495, as amended, will expire on August 31, 1989.

**Docket No.:** 23875

**Petitioner:** Beech Aircraft Corporation  
**Sections of the FAR Affected:** 14 CFR 45.25(b)(2)

**Description of Relief Sought:** To extend Exemption No. 4061C that allows petitioner to display 12-inch-high N-Numbers on the outboard surface of the engine nacelles that are on an integral part of the wing pods. Exemption No. 4061C will expire on December 31, 1989.

**Docket No.:** 25168

**Petitioner:** Evergreen International Airlines, Inc.  
**Sections of the FAR Affected:** 14 CFR 121.583(a)(8)

**Description of Relief Sought:** To extend Exemption No. 4856 that allows petitioner to continue to transport employees and dependents on its DC-8-60 (DC-8) cargo flights. Exemption No. 4856 will expire on September 30, 1989.

**Docket No.:** 069CE

**Petitioner:** Beech  
**Sections of the FAR Affected:** 14 CFR 23.841(b)(6)

**Description of Relief Sought:** To allow the B300 airplane to operate with a higher cabin pressure altitude than 10,000 feet without a warning indication at the pilot station.

**Docket No.:** 25056

**Petitioner:** Mesaba Aviation, Inc.  
**Regulations Affected:** 14 CFR 121.371(a) and 121.378

**Description of Relief Sought/Disposition:** To extend Exemption No. 4804 that allows petitioner to use on its Netherlands-built Fokker F-27 aircraft certain engines, components, and spare parts that have been repaired, overhauled, or inspected by persons outside of the United States who do not hold U.S. airman certificates.

**Grant, May 25, 1989, Exemption No. 4804A**

**Docket No.:** 25674

**Petitioner:** Alitalia Airlines  
**Sections of the FAR Affected:** 14 CFR 21.197

**Description of Relief Sought/Disposition:** To allow petitioner to utilize a continuing special flight permit with authorization for its five U.S.-registered DC-9-32 aircraft.

**Partial Grant, June 1, 1989, Exemption No. 25674**

**Docket No.:** 25750

**Petitioner:** Troy Air  
**Sections of the FAR Affected:** 14 CFR 43.3(g)

**Description of Relief Sought/Disposition:** To allow trained and qualified pilots employed by petitioner to remove and install passenger seats and seat belts of aircraft used in petitioner's Part 135 operations.

**Grant, June 5, 1989, Exemption No. 5056**

**Docket No.:** 25801

**Petitioner:** King TV5  
**Sections of the FAR Affected:** 14 CFR 45.29

**Description of Relief Sought/Disposition:** To allow the use of smaller aircraft registration numbers in place of the 12-inch-high N-numbers required by the regulations.

**Denial, June 9, 1989, Exemption No. 5058**

**Docket Nos.:** 25922 and 25928

**Petitioner:** Westates Airlines, Inc., and Arrow Air  
**Sections of the FAR Affected:** 14 CFR 121.343(b)

**Description of Relief Sought/Disposition:** To allow petitioners to operate airplanes without compliance with digital flight recorder requirements for varying periods of time after May 26, 1989, the date before which compliance must be accomplished under the regulations.

**Grant, June 8, 1989, Exemption No. 5057**

[FR Doc. 89-14453 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-13-M

**Radio Technical Commission for Aeronautics (RTCA); Special Committee 164—Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment; Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act [Pub. L. 92-463; 5 U.S.C. App. I], notice is hereby given for the third meeting of RTCA Special Committee 164 on Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment to be held July 10-12, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) approval of the minutes of the second meeting, RTCA Paper No. 116-89/SC164-9; (3) technical presentation; (4) review of task

assignments from last meeting; (5) review proposed changes to RTCA/DO-170, RTCA Paper No. 120-89/SC164-10; (6) continue review of existing document (RTCA/DO-170); (7) working group sessions; (8) assignment of tasks; (9) other business; and (10) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

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

**Geoffrey R. McIntyre,**

*Designated Officer.*

[FR Doc. 89-14452 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-13-M

#### Maritime Administration

##### Approval of Applicant as Mortgagee; Harris Trust and Savings Bank

Notice is hereby given that Harris Trust and Savings Bank, with offices at 111 West Monroe Street, Chicago, Illinois 60690, has been approved as Mortgagee pursuant to Pub. L. 100-710 and 46 CFR 221.43.

Dated: June 13, 1989.

By Order of the Maritime Administrator.

**James E. Saari,**

*Secretary.*

[FR Doc. 89-14397 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-81-M

#### DEPARTMENT OF THE TREASURY

##### Public Information Collection Requirements Submitted to OMB for Review

Dated: June 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the

Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

##### Bureau of Alcohol, Tobacco and Firearms

*OMB Number:* 1512-0006

*Form Number:* ATF F 3310.4

*Type of Review:* Extension

*Title:* Report of Multiple Sales or Other Disposition of Pistols and Revolvers  
*Description:* This form is used by ATF to develop investigative leads and patterns of criminal activity. It identifies possible handgun traffickers in the illegal market. Its use along the border identifies possible international traffickers.

*Estimated Number of Respondents:* 10,000

*Estimated Burden Hours Per Response:* 12 minutes

*Frequency of Response:* On occasion

*Estimated Total Reporting Burden:* 8,000 hours

*OMB Number:* 1512-0042

*Form Number:* ATF F 7 (5310.12)

*Type of Review:* Extension

*Title:* Application for License, Under 18 U.S.C. Chapter 44, Firearms

*Description:* This form is used by the public when applying for a Federal firearms license for activities as a dealer, importer, manufacturer, or collector. The information requested on the form establishes eligibility for the license.

*Estimated Number of Respondents:* 35,000

*Estimated Burden Hours Per Response:* 57 minutes

*Frequency of Response:* On occasion

*Estimated Total Reporting Burden:* 33,250 hours

*OMB Number:* 1512-0384

*Form Number:* ATF REC 5620/2

*Type of Review:* Extension

*Title:* Airlines Withdrawing Stock From Customs Custody

*Description:* Airlines may withdraw tax-exempt distilled spirits, wine and beer from Customs custody for foreign flights. Required record shows amount of spirits and wines withdrawn, date withdrawn and flight identification; also has Customs certification.

Enables ATF to verify that tax is not due; allows distilled spirits and wines to be traced and maintains accountability. Protects tax revenues.

*Estimated Number of Recordkeepers:* 25

*Estimated Burden Hours Per Recordkeeper:* 100 hours

*Frequency of Response:* On occasion

*Estimated Total Recordkeeping Burden:* 2,500 hours

*Clearance Officer:* Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011,

1200 Pennsylvania Avenue, NW, Washington, DC 20226.

*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 89-14408 Filed 6-16-89; 8:45 am]

BILLING CODE 4810-25-M

##### Public Information Collection Requirements Submitted to OMB for Review

Dated: June 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

##### Comptroller of the Currency

*OMB Number:* 1557-0120

*Form Number:* None

*Type of Review:* Extension

*Title:* Securities Offering Disclosure Rules

*Description:* The collected information is needed by the general public to make informed investment decisions. The affected public consists of national banks that issue securities.

*Respondents:* Business or other for-profit, Small businesses or organizations

*Estimated Number of Respondents:* 75

*Estimated Burden Hours Per*

*Respondent:* 12 hours 6 minutes

*Frequency of Response:* On occasion

*Estimated Total Reporting Burden:* 2,120 hours

*OMB Number:* 1557-0176

*Form Number:* None

*Type of Review:* Extension

*Title:* Record and Disclosure

Requirements—Federal Regulations B, E, Z and M

*Description:* Burden allocated to Comptroller of the Currency by the Office of Management and Budget. This burden is attributable to Federal Regulations B (Equal Credit Opportunity), E (Electronic Funds

Transfer, Z (Truth-in-Lending) and M (Consumer Leasing).

*Respondents:* Businesses or other for-profit, Small businesses or organizations

*Estimated Number of Respondents:* 4,500

*Estimated Burden Hours Per Respondent:* 1 hour

*Frequency of Response:* On occasion

*Estimated Total Reporting Burden:* 5,798,350 hours

*Clearance Officer:* John Ference (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

*OMB Reviewer:* Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 89-14409 Filed 6-16-89; 8:45 am]

BILLING CODE 4810-25-M

#### Fiscal Service

[Dept. Circ. 570, 1988—Rev., Supp. No. 17]

#### Surety Companies Acceptable on Federal Bonds; Termination of Authority; Century Surety Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Century Surety Company of Columbus, Ohio, under the United States Code, Title 31, sections 9304-9308, to qualify as an acceptable surety

on Federal bonds is being terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 53 FR 25058, July 1, 1988, and then suspended effective November 22, 1988, per Supp. No. 4 at 53 FR 48365, dated November 30, 1988.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: June 12, 1989.

Mitchell A. Levine,

*Assistant Commissioner, Comptroller, Financial Management Service.*

[FR Doc. 89-14440 Filed 6-16-89; 8:45 am]

BILLING CODE 4810-35-M

# Sunshine Act Meetings

Federal Register

Vol. 54, No. 116

Monday, June 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).

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**DATE AND TIME:** 2:00 p.m. (Eastern Time) Monday, June 26, 1989.

**PLACE:** Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

**STATUS:** Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

### MATTERS TO BE CONSIDERED:

#### Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations—(Given by the Office of Inspector General).
3. Proposed Final Rule Concerning ADEA Statute of Limitations Tolling for Private Litigants.

#### Closed Session

Litigation Authorization: General Counsel Recommendations.

**Note:** Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at any time for information on these meetings.)

### CONTACT PERSON FOR MORE

**INFORMATION:** Frances M. Hart, Executive Officer on (202) 634-6748.

Dated: June 14, 1989.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued June 14, 1989.

[FR Doc. 89-14593 Filed 6-15-89; 3:52 pm]

BILLING CODE 6750-06-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:04 p.m. on Tuesday, June 13, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) An administrative enforcement proceeding; (2) a delegation of authority relating to administrative

enforcement proceedings; (3) matters relating to the possible closing of certain insured banks; (4) a recommendation concerning the Corporation's assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act with an insured bank; and (5) a recommendation regarding the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 14, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-14587 Filed 6-15-89; 1:24 pm]

BILLING CODE 6714-01-M

## TENNESSEE VALLEY AUTHORITY

[Meeting No. 1417]

**TIME AND DATE:** 10 a.m. (E.D.T.), June 21, 1989.

**PLACE:** TVA Chattanooga Office Complex Auditorium, 1101 Market Street, Chattanooga, Tennessee.

**STATUS:** Open.

**AGENDA:** Approval of minutes of meeting held on May 3, 1989.

### Action Items

#### New Business

A—Budget and Financing

A1. Arrangements for Early Payment of 1981 Series D, 1982 Series C, and up to \$200 Million of 1982 Series B Bonds.

A2. Modification to the Capital Budget Finance From Power Proceeds and Borrowings for Fiscal Year 1989 to Provide a 161-kV Delivery Point to Cleveland Utilities at the Proposed South Cleveland Substation.

A3. Modification to the Capital Budget Finance From Power Proceeds and Borrowings for Fiscal Year 1989 to Include

Funds to Loop the Cherokee-Pigeon Forge 161-kV Transmission Line into Douglas Hydro.

A4. Modification to the Capital Budget Financed From Power Proceeds and Borrowings for Fiscal Year 1989 to Improve Service to the Collinsville 161-kV Substation.

### C—Power Items

C1. Renewal Power Contract with Smithville, Tennessee.

C2. Replacement Power Contract with Northcentral Mississippi EPA.

### E—Real Property Transactions

E1.\* Sale of Approximately 5.67 Acres of Land of Wheeler Reservoir in Morgan County, Alabama.

E2. Sale of the Jackson, Tennessee, Power Service Center Property in Madison County, Tennessee.

E3. Letter Agreement with the Industrial Development Board of McMinnville and Warren County, Tennessee, for 161-kV Transmission Line.

E4. Sale of Permanent Easement Affecting Approximately 6.5 Acres of Land in Hamilton County, Tennessee.

E5. Letter Agreements with Reynolds Metals Company and The Industrial Development Board of Colbert County, Alabama, for Relocation of 161-kV Switching Facilities.

E6. Grant of Permanent Easement Affecting Approximately 0.6 Acre of Kentucky Reservoir Land in Decatur County, Tennessee.

E7. Deed Modification Affecting Approximately 9.3 Acres of Land on Fort Loudoun Reservoir in Knox County, Tennessee.

### F—Unclassified

F1\* Contract No. TV-77925A with U.S. Department of the Air Force, Engineering and Services Center, for Groundwater Transport Validation.

F2. Revision to TVA Code X Nuclear Safety.

F3. Supplement No. 3 to Personal Services Contract No. TV-74012A with Excel Services Corporation.

F4. Supplement No. 4 to Personal Services Contract No. TV-71409A with Thomas A. Ippolito.

F5. Contract No. TV-78082A with Northeast Mississippi Regional Water Supply District for Surface Water Supply System.

F6. Arrangements for Making Available TVA's Reserve Telecommunications Capacity to Outside Users.

F7. Patent License Agreements for Compacting Plate Locking Device.

F8. Changes in Certifying Officers.

\* Items approved by individual Board members. This would give formal ratification to the Board's action.

F9. Employee Discipline Policy—TVA Code  
III Employee Discipline.

**CONTACT PERSON FOR MORE**

**INFORMATION:** Alan Carmichael,  
Manager of Public Affairs, or a member  
of his staff can respond to requests for  
information about this meeting. Call  
(615) 632-8000, Knoxville, Tennessee.  
Information is also available at TVA's  
Washington Office (202) 479-4412.

Dated: June 14, 1989.

**Edward S. Christenbury,**

*General Counsel and Secretary.*

[FR Doc. 89-14542 Filed 6-15-89; 10:07 am]

**BILLING CODE 8120-01-M**

Department of  
Transportation

Research and Special Programs  
Administration

1200 New York Avenue, N.W.

Washington, D.C. 20590

Telephone: (202) 418-3000

Telex: 450000

Fax: (202) 418-3000

Internet: DOT

World Wide Web: DOT

Publications: DOT

Library: DOT

Travel: DOT

Video: DOT

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Sign Language: DOT

Relay: DOT

Assistance: DOT

# Corrections

Federal Register

Vol. 54, No. 116

Monday, June 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 AGRICULTURE

### Federal Grain Inspection Service

#### 7 CFR Part 810

#### United States Standards for Wheat

##### *Correction*

In proposed rule document 89-13397 beginning on page 24176 in the issue of Tuesday, June 8, 1989, make the following corrections:

#### § 10.2202 [Corrected]

1. On page 24177, in the third column, in § 810.2202 (a)(6)(ii), in the fourth line, "white club wheat" should read "other soft white wheats".

2. On the same page, in the same column, in § 810.2202 (a)(6)(iii), in the third line, "other soft white wheats" should read "white club wheat".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-34002; FRL 3575-9]

### Pesticides Required To Be Reregistered; List B

#### *Correction*

In notice document 89-12572 beginning on page 22706 in the issue of Thursday, May 25, 1989, make the following correction:

On page 22706, in the first column, under **FOR FURTHER INFORMATION**

**CONTACT**, in the third line, "(H75008C)" should read "(H7508C)".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 89-AGL-9]

### Proposed Alteration of VOR Federal Airway; Illinois

#### *Correction*

In proposed rule document 89-12430 beginning on page 22447 in the issue of Wednesday, May 24, 1989, make the following correction:

On page 22447, in the third column, in the document heading, the docket number was incorrect and should read as set forth above.

BILLING CODE 1505-01-D

# Federal Register

Monday  
June 19, 1989

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## Part II

### Department of Transportation

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#### Research and Special Programs Administration

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49 CFR Parts 171 and 175  
Detailed Hazardous Materials Incident  
Reports; Final Rule

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 171 and 175**

[Docket No. HM-36B; Amdt. Nos. 171-101, 175-43]

RIN 2137-AA51

**Detailed Hazardous Materials Incident Reports**

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** These amendments implement several changes to RSPA's system for collecting information on incidents involving the transportation of hazardous materials. Briefly, these amendments:

1. Revise the hazardous materials incident report form—DOT F 5800.1—to provide more meaningful and comprehensive incident data, especially in terms of incident causation and consequence;
2. Require carriers to maintain a copy of the incident report forms submitted to RSPA for a period of two years;
3. Require an incident report form to be submitted to RSPA within 30 days of the date of the incident (the current reporting requirement is 15 days);
4. Expand the present requirement that RSPA be notified of certain events including evacuations, closure of major transportation arteries or facilities, unscheduled events involving aircraft transporting hazardous materials, and fires associated with shipments of radioactive materials.
5. Clarify the present requirement that RSPA be notified of certain events involving radioactive materials and etiological agents.
6. Require all carriers involved in a hazardous materials incident to provide assistance to an authorized representative of the Department of Transportation (DOT) in any subsequent investigations or special studies which DOT might undertake in connection with the incident.

**EFFECTIVE DATE:** January 1, 1990. The current (DOT F. 5800.1) form may be continued in use until the effective date of this rule. However, compliance with the regulations as amended is authorized immediately.

**FOR FURTHER INFORMATION CONTACT:** Joseph S. Nalevanko, (202) 366-4484, Policy Development and Information Systems Division, or Marilyn E. Morris, (202) 366-4488, Standards Division,

Office of Hazardous Materials Transportation, 400 7th Street SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** On March 16, 1984, RSPA published an advance notice of proposed rulemaking (ANPRM) in the *Federal Register* (49 FR 10048) which proposed to change the hazardous materials incident reporting requirements. On March 27, 1987, RSPA published a notice of proposed rulemaking (NPRM) in the *Federal Register* (52 FR 9996) inviting comments on several specific proposed changes to its system of collecting information on incidents involving the transportation of hazardous materials. These changes are intended to enhance the value of the incident report form (DOT F 5800.1) as a means for the DOT to evaluate the effectiveness of its regulatory program, and to determine the need for regulatory changes to address new or emerging hazardous materials transportation safety problems. It is also intended to facilitate and enhance the ease of completing the hazardous materials incident report form for those who are required to submit this form to DOT.

In response to the NPRM, RSPA received written comments from two government agencies and 13 members of the public. All comments have been considered in preparing this final rule. Significant changes in this final rule from the proposals published in the NPRM are discussed in detail below. Information contained in the Supplementary Information section of the ANPRM and NPRM is hereby incorporated in this final rule by reference, except as it may be superseded herein. The public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions and 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: Information Systems Manager, Office of Hazardous Materials Transportation, DHM-63, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (2137-0039), Washington, DC 20503.

**Summary of Changes From NPRM**

In response to the comments received and reviewed by RSPA, the final rule reflects several changes to the proposals contained in the NPRM.

**Section 171.15 Immediate Notice of Certain Hazardous Materials Incidents**

The NPRM had proposed to amend § 171.15 (and § 175.45 concerning incidents involving aircraft) to include three additional criteria for the immediate (i.e., telephonic) notification of the Department of certain types of hazardous materials incidents.

The first of the criteria pertains to incidents involving the evacuation of one or more properties adjacent to the property on which the incident occurs. One commenter found the language of this proposed reporting requirement to be ambiguous. This commenter stated that an "airport is usually a contiguous property of many square miles and would presumably, therefore, not require the notification if evacuated," i.e., if people in one area of an airport were evacuated to another area of the airport, the notification presumably would not be required. In response to this comment, paragraph (a)(6) of § 171.15 has been reworded to eliminate references to adjacent properties. The language of the proposed rule implied incorrectly that the Department need not be immediately notified of incidents where, for example, the general public in one area of an airport were evacuated to another area of the airport, or even of instances in which people are evacuated from an airport to property or properties adjacent to the airport that, in turn, are not evacuated. This final rule clarifies that paragraph (a)(6) applies only to incidents resulting in evacuations of the general public that are the direct result of hazardous materials. The purpose of limiting the scope of this reporting requirement to evacuations of the general public is to preclude the reporting of events wherein the initial response of either emergency response or supervisory personnel is to clear an area until the presence and the nature of a hazardous material is identified and the scope of the public risk is more adequately defined. Several commenters suggested that this safety purpose could be more effectively accomplished by limiting the reporting requirement to evacuations lasting a certain length of time. RSPA agrees with these comments and has accordingly modified the reporting requirement to accommodate them. Incidents involving evacuations of the general public with a duration of less than one hour will not require the immediate notification of the Department. It should be noted that, as written, the final rule does not require the immediate notification of the Department if members of the general public are evacuated from an area on

the erroneous assumption that a hazardous material is present or involved, even if the duration of the evacuation exceeds one hour.

A number of commenters objected to the requirement that the Department be given immediate notification of incidents involving evacuations where there is no release or spill of a hazardous material. The basis for this objection is summarized by one commenter who noted that:

\* \* \* local officials often order evacuations when no threat of physical injury or property damage exists. Evacuations are frequently ordered out of an abundance of caution. For example, an evacuation is usually ordered when a train derailed containing hazardous materials, even if no hazardous material is released as a result of the derailment. The decision to evacuate, while understandable from the perspective of local officials, is not sufficiently related to safety issues to require carriers to satisfy the notification requirement contained in the proposed rule, § 171.15(a)(6).

RSPA does not agree with this line of reasoning. The Department's need to be immediately informed of certain types of evacuations does not depend on whether, in hindsight, a particular decision to evacuate an area was disproportionate to the actual risks involved in an incident. As pointed out in the Department's Emergency Response Guidebook (Guidebook for Initial Response to Hazard Materials Incidents, DOT P 5800.4), an "evacuation is, by itself, a process of significant risk for the persons being evacuated." The risk associated with a hazardous materials incident is directly related to the probability of the release or spill of the material and the number of people exposed to the release or spill. When a tank car or a cargo tank truck overturns, the probability of a release of the hazardous material is certainly greater than otherwise, and the risk associated with such events can be reduced if the number of people exposed to the potential release of the material is also reduced (i.e., by means of an evacuation). Finally, RSPA finds no merit in the argument that evacuations are never warranted unless there has been an actual release of a hazardous material. A tank car carrying a flammable gas can for a time be engulfed by fire and still not leak; but certainly an evacuation would be appropriate in such a situation. Therefore, RSPA cannot accept the suggestion that the reporting requirement for evacuations be limited only to instances in which there has been an actual release of the hazardous material.

The NPRM proposed to amend § 171.15 to require the immediate notification of the Department for all incidents involving the closure or shutdown of one or more major transportation arteries or facilities for one hour or more. The phrase "major transportation arteries or facilities" includes, at the minimum, segments of interstate highways; bridges or tunnels providing access to interstate highways; airports where scheduled passenger operations are conducted; commercially navigable waterways; and railroad mainline track. Several commenters opposed this reporting criterion on the grounds that it is unduly broad and unnecessary from a safety standpoint, especially if no release or spill of a hazardous materials occurs. RSPA believes that there are significant safety concerns involved in decisions to shut down or close major transportation arteries and facilities that are the direct result of hazardous materials. Some of the more obvious safety concerns involved with the shut down or closure of major transportation arteries and facilities are: The prevention of the general public from entering the area affected by the incident; diversions and delays in the routing of other hazardous materials; and the fact that incidents that result in the shut down of major transportation arteries or facilities are, by their very nature, more severe and entail greater public safety concerns than incidents that do not result in such disruptions. These safety concerns are not definable solely in terms of whether or not there has been a release of hazardous materials. Even for incidents involving fatalities or injuries it is not necessarily the case that such incidents entail the involuntary release of the hazardous material from its container. People have been killed or injured while cleaning tanks that contained hazardous materials or by opening domes or manholes of cargo tanks and tank cars containing hazardous materials. These are incidents that may not entail the unintentional release of the hazardous material.

One commenter objected to the reporting criterion on the grounds that it would require "a rail carrier to immediately report practically every derailment because a rail line is often closed for more than an hour when a train derailed." This objection is apparently based on a misreading of § 171.15(a). While it is true that derailments almost always result in rail lines being closed for more than an hour solely because of the safety concerns and mechanical problems involved with clearing the track, it is not always the case that rail lines are closed "as the

direct result of hazardous materials". If a rail line is closed as the direct result of hazardous materials for less than an hour, then carriers are not required to immediately notify the Department even if hazardous materials are present, unless other reporting criteria require such notification.

The NPRM had proposed to amend § 171.15 to require the immediate notification of the Department for all incidents involving deviation of an aircraft from its planned course or its scheduled landing. The only comment received on this reporting criterion pointed out that the criterion should also pertain to flights that are terminated before take-off (i.e., a turnaround) due to hazardous materials, and to certain other events, such as flights declaring an emergency due to hazardous materials, even though a flight did not deviate from its planned route, or entail an unscheduled landing. RSPA agrees, and has changed this reporting requirement to pertain to all incidents in which as a direct result of hazardous materials, the operational flight pattern or routine of an aircraft is altered.

In reviewing the comments received in response to the proposed changes to § 171.15 (and § 175.45), RSPA believes the distinction should be clarified between incidents in which something happens as a direct result of hazardous materials (e.g., a death caused by exposure to a hazardous materials) and two other types of incidents. These are incidents in which either something happens to the hazardous material itself such as its being spilled or something occurs in the presence of the hazardous material such as the occurrence of a fire.

Concerning the occurrence of fires and the presence of radioactive materials, § 171.15(a)(4) as presently worded requires the immediate notification of the Department for "each incident \* \* \* in which as a direct result of hazardous materials: \* \* \* fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material." In the case of fires this reporting requirement can be incorrectly interpreted as applying only to instances in which a hazardous material (which may not be a radioactive material) has caused a fire, i.e., the fire is a direct result of a hazardous material. The Department must be immediately notified regardless of whether or not the fire, or breakage, or spillage, or suspected radioactive contamination is the direct result of a hazardous material. In light of these considerations, which also apply to incidents involving etiologic agents, § 171.15 has been

reworded to clarify its intended scope and coverage.

#### Section 171.16 Detailed Hazardous Materials Incident Reports

The NPRM proposed to revise the hazardous materials incident report form—DOT F 5800.1—to provide more meaningful and comprehensive data on incidents, especially in terms of causation and consequence factors. In general, the proposed revision of the report form was designed to retain as many features as possible of the current report form, not only because many of the data fields on the current report form are essential, but also because of the wide experience and familiarity the industry has with this form. The improvement in the analytic usefulness of the form was accomplished by carefully and more logically reorganizing data fields and by providing a much broader array of choices to be marked as factors that best describe the nature of the incident. In the past, this type of information was largely provided by carriers who submitted lengthy narrative descriptions of the incident. RSPA believes that this change to the report form will significantly facilitate the completion of the form, provide a more systematic description of the incident, and decrease the time and effort involved in entering the information into RSPA's computerized incident data base. With one exception, all commenters favored a revision of the current incident report form.

A number of commenters suggested that several new data fields be added to the report form and that other proposed and existing data fields be clarified. These suggestions have been carefully evaluated and, where appropriate, have been incorporated into the report form (exhibit #1) and discussed in the guidance document for preparing the form (exhibit #2). For example, the new report form now requires those submitting the form to check the appropriate block that best describes the land use and the type of community at the site of the incident. On the other hand, the proposed data field pertaining to the estimated ambient temperature at the time of the incident has been deleted from the report form. RSPA believes that such estimates are not likely to be very accurate and will be duplicated by information requested elsewhere on the report form (e.g., instances of package failures due to heat or freezing).

Many commenters took exception to the proposed requirement that copies of other required reports be submitted to RSPA along with the incident report form. RSPA agrees and has deleted the

requirement accordingly. This action, however, does not affect the current requirement in § 171.16(a)(1) that a copy of the hazardous waste manifest be attached to the incident report form when the incident involves a hazardous waste; nor does it affect the current requirement in § 175.45(c) that, for incidents involving aircraft, a separate copy of the incident report form be sent to the FAA Civil Aviation Security Office nearest the incident.

The NPRM proposed to require that photographs be taken of the damage to packaging and accompany all report forms for all incidents resulting in a fatality or an injury requiring hospitalization caused by the release of a hazardous material from bulk packaging such as portable tanks, cargo tanks, rail tank cars (see § 171.8 for a precise definition of "bulk packaging"). Two commenters opposed this requirement. The American Trucking Association, Inc. (ATA) urged that photographs of incidents be furnished at the option of the carrier; the National Tank Truck Carriers Inc., (NTTC) believed that the proposed requirement that carriers assist the Department in any investigation or special studies relating to an incident (see discussion on § 171.21, *infra.*) would provide a better means for obtaining information on how a package failed than that provided by a photograph.

In light of these comments, RSPA has decided to retain the present language on the current incident report form that photographs and diagrams of the particulars of an incident should be, but are not required to be, submitted for clarification along with the report form itself.

Several commenters urged that RSPA give consideration to incorporating into Part 171 of 49 CFR, a specific set of instructions for completing Form 5800.1, in a manner similar to 49 CFR 394.20, which provides instructions for the preparation of the Motor Carrier Accident Report form MCS-50T. This suggestion has not been accepted. Currently, RSPA publishes a detailed, seven-page document entitled "Guidelines for Preparing Hazardous Materials Incident Reports." This guide is intended to assist carriers in accurately completing the hazardous materials incident report, Form 5800.1, and is available to the public upon request to the RSPA. In conjunction with this rulemaking, the guide has been extensively revised and expanded (see exhibit #2). RSPA's experience has shown that possible future revisions, clarifications and additional instructional assistance in completing

the incident report form are more easily accommodated and accomplished through a guidelines document than by incorporating such material into the body of the regulations. However, an informational note has been added at the end of § 171.16 to advise interested persons as to the availability of the guidelines free of charge upon request to RSPA.

The NPRM proposed that the current 15-day period for submitting incident report forms be increased to 30 days in order to provide more time to gather data and complete the report form as accurately as possible. Generally, commenters were either silent about this proposal or were in support of it. One commenter, however, urged RSPA to clarify the requirement that the information to be submitted within 30 days of the date of the incident be the best information available within 30 days. RSPA has not accepted this comment. Information that can reasonably be expected to be available within 30 days is, by definition, the best information available. No useful purpose is served by creating an implied distinction between the best information available and information that is less than the best. It is true that better information on the consequences of an incident, especially in terms of health effects or the estimated dollar amount of damage, may become available after 30 days. But RSPA has not proposed a requirement that carriers monitor the consequences of an incident beyond 30 days and subsequently submit this information to RSPA even though carriers on their own initiative may wish, and are encouraged, to do so.

This final rule also reflects two further revisions to § 171.16. The phrase "as a direct result of hazardous materials" has been deleted from § 171.16(a) as no longer applicable in view of the need to distinguish between incidents and consequences which are the "direct result of hazardous materials" and incidents involving the mere presence of hazardous materials. Section 171.16(a)(2) has been changed to reflect the fact that Part H of the current report (Form F 5800.1) has become section VIII in the revised report form.

The comments relating to the proposed change to § 171.16 concerning the requirement that carriers maintain a copy of each incident report for a period of two years are reviewed in the discussion under § 171.21 below, because this record retention requirement is related to the requirements of that section.

*Section 171.21 Assistance in Investigations and Special Studies*

As proposed in the NPRM, paragraph (a) of § 171.21 would require that hazardous materials carriers make all records and information pertaining to any incident available, upon request, to an authorized representative of the Department of Transportation. Further, under this paragraph, a carrier of hazardous materials is required to give an authorized representative or special agent of the Department all reasonable assistance in the investigation of any incident. One commenter expressed concern about the interpretation of the phrase "reasonable assistance," pointing out that it is possible that a carrier's understanding of this phrase could differ from that of the representative or agent of the Department. In order to avoid such differences of opinion, the commenter suggested that paragraph (a) of § 171.21 be limited to the requirement that carriers make any existing records available to authorized representatives of the Department. RSPA has not accepted this comment. The language of § 171.21 is virtually identical to the language of § 394.15 of the Federal Motor Carrier Safety Regulations (49 CFR Parts 390-397). Section 394.15 has been in force for a number of years, and the Federal Highway Administration (FHWA) reports that the interpretation of the term "reasonable assistance" has not been a source of contention between the FHWA and motor carriers subject to its jurisdiction. Moreover, the requirement establishes a "reasonableness" test which has wide currency and broad judicial acceptance concerning matters that cannot be specified in advance.

As proposed in the NPRM, under paragraph (b)(1) of § 171.21, carriers would be required to respond with 15 days, or within such other time as specified by the Department, to inquiries by the Department in connection with any Department studies of hazardous material incidents. A number of commenters urged that this paragraph be changed to permit a 30-day or longer response period. These commenters point to the possibility that a carrier might be unable to respond to such an inquiry within 15 days, especially if the inquiry involved a large number of documents. RSPA believes that the proposed 15 day limitation could be too restrictive, and a 30 day period has been adopted in the final rule.

Since the incident report forms will be of significant importance in any investigations or special studies conducted by the Department under

§ 171.21, the NPRM had proposed to revise § 171.16 to require all carriers to maintain a copy at their principal places of business of each incident report form submitted to the Department for a period of two years. The American Trucking Association (ATA) was joined by another commenter in taking strong exception to this proposed requirement on the grounds that this imposes an unreasonable paperwork burden on carriers, that the absence of such a requirement in the current regulations has created no apparent problem, that the retention of the incident report form by the carrier serves no useful purpose to the carrier or to the Department, and that the requirement results in the duplication of information. RSPA disagrees with these comments for several reasons.

First, regarding the paperwork burden on carriers, in general, given that failure to comply with the hazardous materials incident reporting requirements can result in a civil penalty, it is doubtful that prudent carriers would not keep copies of the reports they submit to the Department in their own files. Moreover, 49 CFR 394.13 requires motor carriers to maintain " \* \* \* a copy of each report that the carrier has filed pursuant to § 394.9, with a state agency, or with an insurer, with respect to any reportable accident entered in the accident register." Some of these accident reports will also entail hazardous materials incidents that are required to be kept by motor carriers under § 394.13(c) for a period of three years. It should also be noted that the Federal Railroad Administration (FRA) requires each railroad to maintain a duplicate of each form it submits to the FRA under 49 CFR 225.21 for at least two years.

Second, § 171.16 requires that the hazardous materials incident report form be provided to the Department in duplicate. The incremental paperwork burden of a carrier's preparing the incident report form in triplicate, with one copy for the carrier's own records, is minimal.

Third, hazardous materials incident report forms can be and have been used as evidence in court. RSPA does not believe that carriers can or would be content with the idea that RSPA be the sole possessor of such records. This disposes of the claim that the retention of the incident report form by the carrier is of no use to the carrier, even apart from the insight and benefit a carrier can derive from studying its own record of hazardous materials incidents.

Fourth, the contention that the absence of a record retention requirement in the current regulations

has created no apparent problems is beside the point; it is precisely to prevent future problems, especially in terms of the enforceability of § 171.21, that is the principal reason for the record retention requirement. Without such a requirement, the investigations and special studies envisioned in § 171.21 would be very difficult, if not impossible, to implement. This requirement will also aid in the verification of the accuracy of the reports submitted to RSPA, thus demonstrating that the requirement is not only useful, but necessary.

Finally, while the requirement does result in a duplication of information, this duplication has the result of increasing the availability and accessibility of information. It does not duplicate efforts to obtain information.

As proposed in the NPRM, a copy of each incident report was to be retained at the carrier's principal place of business. However, as pointed out by the ATA, under 49 CFR 394.13, motor carriers may maintain their accident registers at regional or terminal offices, upon written request to, and with the approval of, Director, Regional Motor Carrier Safety, FHWA. At the urging of the ATA, RSPA has modified the requirement that a copy of the incident report form be retained at the carrier's principal place of business to include "other places as authorized and approved in writing by an agency of the Department of Transportation."

*Additional Public Comments*

In response to the NPRM, RSPA also received a number of comments on issues which, although they concern RSPA's Hazardous Materials Information System (HMIS), were either fully discussed and resolved in the preamble to the NPRM or were not the subject of any particular proposed amendments in the NPRM. Although it is not obligated to respond to such comments, RSPA believes that the acknowledgment and a short discussion of these comments are worthwhile.

The Air Transport Association of America commented that the NPRM included no proposal to exempt air carriers from the current requirement under paragraphs (c) and (d) of § 171.16 to report a hazardous material incident involving a consumer commodity; a battery, electric storage, wet, filled with acid or alkali; or paint and paint-related material when shipped in packagings of five gallons or less. This commenter could find no justification that supports the "continued requirements to report incidents that occur aboard aircraft which under all other circumstances

DOT clearly believes to be trivial." In response to these comments, RSPA notes that the exception provided by paragraphs (c) and (d) of § 171.16 does not apply to incidents involving the transportation of hazardous waste. Also, RSPA believes that there is a fundamental difference in the risk of transporting hazardous materials aboard aircraft versus other modes of transportation. A simple, but non-trivial, instance of this difference is illustrated by the fact that, generally, unlike a truck driver, a pilot cannot simply stop his vehicle to determine what is causing the smoke or fumes emitting from the cargo hold. Moreover, the rapidity with which pressure and temperature changes can occur aboard aircraft is vastly different from what can occur aboard vehicles and vessels in surface transportation.

The Association of American Railroads (AAR), in connection with the requirement in § 171.15 that carriers report certain hazardous materials incidents by telephone at the earliest possible moment, noted that:

\* \* \* for certain incidents two phone calls have to be made, to RSPA (49 CFR 171.15) and the National Response Center (40 CFR 300.37), and the Federal Railroad Administration and the National Transportation Safety Board (49 CFR 225.9 and 840.3). FRA and NTSB have coordinated their requirements so that only one phone call has to be made to satisfy their requirements, although their actual notification requirements are independent of each other. Similarly, RSPA and EPA have coordinated their requirements so that only one phone call has to be made to satisfy their requirements, although their requirements are also independent of each other. We see no reason why RSPA, NTSB, FRA, and NRC cannot develop one set of notification requirements for transportation incidents.

These comments are well taken, and RSPA, as time and response permit, will explore the feasibility of a "one call" notification system under § 171.15 which would simplify the carrier notification requirements.

The National Tank Truck Carriers, Inc. (NTTC) has commented on two issues that were discussed in the preamble of the NPRM. The first issue pertains to the requirement in § 171.15(a) to report all unintentional releases of hazardous materials, regardless of the amount of the material released. The NTTC believes the RSPA should establish "a minimum product loss amount threshold to trigger" this reporting requirement. RSPA does not agree. Essentially, as explained in the preamble to the NPRM, such a reporting requirement would severely diminish the usefulness of the hazardous materials incident reporting system. The second issue raised by the NTTC

pertains to the question of who is responsible for reporting incidents occurring during loading/unloading operations that are directed by or under the control of shippers or consignees. It is the carrier who is required to report each incident that occurs during the course of transportation (including loading, unloading, and storage incidental thereto), regardless of who is in control of the loading/unloading operations. However, the reporting requirement does not apply if the carrier is not physically present at the site of the incident (and not required to be) and has no knowledge of the incident ("knowledge" is defined in 49 CFR 107.299).

The ATA commented that the incident report form—DOT F 5800.1—provides information that is of value to DOT as well as to carriers, shippers, and container manufacturers, and urged RSPA to make this information more available to the public in terms of increased published reports and analyses based on the incident reports it receives. Currently, RSPA publishes an annual report on hazardous materials transportation which, among other things, provides summary statistics on hazardous materials transportation incidents. RSPA will also soon be publishing a separate document devoted entirely to the presentation of statistics on hazardous materials transportation incidents.

#### Administrative Notices

a. *Paperwork Reduction Act.* The information collection requirements contained in this rule were submitted for approval to OMB under provision of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The information collection requirements in the final rule were approved by OMB and assigned control number —

b. *Executive Order 12291.* RSPA has determined that this rulemaking: (1) Is not a "major rule" under Executive Order 12291; (2) is "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the docket.

c. *Regulatory Flexibility Act.* The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires a review of certain rules proposed after January 1, 1981 for their effects on small businesses, organizations, and governmental bodies. I certify that this regulation will not

have a significant economic impact on a substantial number of small entities.

d. *Executive Order 12612.* This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

e. A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Regulatory Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Regulatory Agenda.

#### List of Subjects

##### 49 CFR Part 171

Hazardous materials transportation, General information, Regulations, and Definitions.

##### 49 CFR Part 175

Hazardous materials transportation, Carriage by aircraft.

In consideration of the foregoing, 49 CFR Part 171 and Part 175 are amended as follows:

#### PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

2. In § 171.15, paragraph (a) is revised to read as follows:

##### § 171.15 Immediate notice of certain hazardous materials incidents.

(a) At the earliest practicable moment, each carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph (b) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which—

(1) As a direct result of hazardous materials—

- (i) A person is killed; or
- (ii) A person receives injuries requiring his or her hospitalization; or
- (iii) Estimated carrier or other property damage exceeds \$50,000; or
- (iv) An evacuation of the general public occurs lasting one or more hours; or

(v) One or more major transportation arteries or facilities are closed or shut down for one hour or more; or

(vi) The operational flight pattern or routine of an aircraft is altered; or

(2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material (see also §§ 174.45, 175.45, 176.48, and 177.807 of this subchapter); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or

(4) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of paragraph (a) (1), (2) or (3) of this section.

\* \* \* \* \*

3. In § 171.16, paragraphs (a) and (b) are revised, and a "Note" is added at the end of the section to read as follows:

**§ 171.16 Detailed hazardous materials incident reports.**

(a) Each carrier who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 (Rev. 6/89) to the Department within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which any of the circumstances set forth in § 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. If a report pertains to a hazardous waste discharge:

(1) A copy of the hazardous waste manifest for the waste must be attached to the report; and

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any removed waste must be entered in Section IX of the report form (Form F 5800.1) (Rev. 6/89).

(b) Each carrier making a report under this section shall send the report to the Information Systems Manager, DHM-63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590; a copy of the report shall be retained, for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in

writing by an agency of the Department of Transportation.

\* \* \* \* \*

**Note:** A guideline document for assisting in the completion of DOT Form F 5800.1 (Rev. 6/89) may be obtained from the Office of Hazardous Materials Transportation, DHM-51, U.S. Department of Transportation, Washington, DC 20590.

4. In Part 171, a new § 171.21 is added to read as follows:

**§ 171.21 Assistance in investigations and special studies.**

(a) A carrier who is responsible for reporting an incident under the provisions of § 171.16 shall make all records and information pertaining to the incident available to an authorized representative or special agent of the Department of Transportation upon request. The carrier shall give an authorized representative or special agent of the Department of Transportation reasonable assistance in the investigation of the incident.

(b) If the Department of Transportation makes an inquiry to a carrier of hazardous materials in connection with a study of incidents, the carrier shall—

(1) Respond to the inquiry within 30 days after its receipt or within such other time as the inquiry may specify; and

(2) Provide full, true, and correct answers to any questions included in the inquiry.

5. The incident reporting form (DOT Form F. 5800.1) is revised to read as indicated in the attached exhibit #1. (The form will not appear in the Code of Federal Regulations.)

**PART 175—CARRIAGE BY AIRCRAFT**

6. The authority citation for Part 175 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

7. In § 175.45, paragraph (a), the introductory text of paragraph (b) and the first sentence of paragraph (c) are revised to read as follows:

**§ 175.45 Reporting hazardous materials incidents.**

(a) Each operator who transports hazardous materials shall report to the nearest FAA Civil Aviation Security Office by telephone at the earliest practicable moment after each incident that occurs during the course of transportation (including loading, unloading or temporary storage) in which—

(1) As direct result of hazardous materials—

(i) A person is killed; or

(ii) A person receives injuries requiring hospitalization; or

(iii) Estimated carrier or other property damage, exceeds \$50,000; or

(iv) An evacuation of the general public occurs lasting one or more hours; or

(v) One or more major transportation arteries or facilities are closed or shutdown for two hours or more; or

(vi) The operational flight pattern or routine of an aircraft is altered; or

(2) Fire, breakage, or spillage or suspected radioactive contamination occurs involving shipment of radioactive materials (see § 175.700(b)); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents (in addition to the report required by paragraph (a) of this section, a report on an incident involving etiologic agents should be telephoned directly to the Director, Center for Disease Control, U.S. Public Health, Atlanta, Georgia, area code 404-633-5313); or

(4) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of paragraph (a) (1), (2) or (3) of this section.

(b) If the operator conforms to the provisions of this section, the carrier requirements of § 171.15, except § 171.15(c), of this subchapter shall be deemed to have been satisfied. The following information shall be furnished in each report.

\* \* \* \* \*

(c) Each operator who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 (Rev. 6/89) within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading or storage incidental thereto) in which any of the circumstances set forth in paragraph (a) of this section occurs or there has been unintentional release of hazardous materials from a package. \* \* \*

\* \* \* \* \*

Issued in Washington, DC on May 23, 1989, under the authority delegated in 49 CFR Part 1.

Travis P. Dungan,  
Administrator, Research and Special  
Programs Administration.

**Exhibit 1**

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION  
HAZARDOUS MATERIALS INCIDENT REPORT

REQUIREMENTS: The regulations requiring reporting of hazardous materials incidents are contained in the Code of Federal Regulations (CFR), Title 49 Parts 100 to 179 (governing the transport of hazardous materials by rail, air, water and highway). Failure to comply with the reporting requirements contained therein can result in a civil penalty.

A Guide for Preparing the Hazardous Materials Incident Report is available from the Information Systems Manager, Office of Hazardous Materials Transportation, DHM-63, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

PUBLIC REPORTING BURDEN FOR THIS COLLECTION OF INFORMATION IS ESTIMATED TO AVERAGE 1 HOUR PER RESPONSE, INCLUDING THE TIME FOR REVIEWING INSTRUCTIONS, SEARCHING EXISTING DATA SOURCES, GATHERING AND MAINTAINING THE DATA NEEDED, AND COMPLETING AND REVIEWING THE COLLECTION OF INFORMATION. SEND COMMENTS REGARDING THIS BURDEN ESTIMATE OR ANY OTHER ASPECT OF THIS COLLECTION OF INFORMATION, INCLUDING SUGGESTIONS FOR REDUCING THIS BURDEN, TO INFORMATION SYSTEMS MANAGER, OFFICE OF HAZARDOUS MATERIALS TRANSPORTATION, DHM-63, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, WASHINGTON, DC 20590; AND TO THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, DC 20503.

TEAR HERE

DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS INCIDENT REPORT					Form Approved OMB No. 2157-0039
INSTRUCTIONS: Submit this report in duplicate to the Information Systems Manager, Office of Hazardous Materials Transportation, DHM-63, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590. If space provided for any item is inadequate, complete that item under Section IX, keying to the entry number being completed. Copies of this form, in limited quantities, may be obtained from the Information Systems Manager, Office of Hazardous Materials Transportation. Additional copies in this prescribed format may be reproduced and used, if on the same size and kind of paper.					
<b>I. MODE, DATE, AND LOCATION OF INCIDENT</b>					
1. MODE OF TRANSPORTATION: <input type="checkbox"/> AIR <input type="checkbox"/> HIGHWAY <input type="checkbox"/> RAIL <input type="checkbox"/> WATER <input type="checkbox"/> OTHER _____					
2. DATE AND TIME OF INCIDENT (Use Military Time; e.g. 8:30am = 0830; noon = 1200, 5pm = 1800, midnight = 2400) Date: _____ / _____ / _____ TIME _____					
3. LOCATION OF INCIDENT (include airport name in ROUTE/STREET if incident occurs at an airport.) CITY: _____ STATE: _____ COUNTY: _____ ROUTE/STREET: _____					
<b>II. DESCRIPTION OF CARRIER, COMPANY, OR INDIVIDUAL REPORTING</b>					
4. FULL NAME			5. ADDRESS (Principal place of business)		
6. LIST YOUR OMC MOTOR CARRIER-CENSUS NUMBER, REPORTING RAILROAD ALPHABETIC CODE, MERCHANT VESSEL NAME AND ID NUMBER OR OTHER REPORTING CODE OR NUMBER					
<b>III. SHIPMENT INFORMATION (From Shipping Paper or Packaging)</b>					
7. SHIPPER NAME AND ADDRESS (Principal place of business)			8. CONSIGNEE NAME AND ADDRESS (Principal place of business)		
9. ORIGIN ADDRESS (if different from Shipper address)			10. DESTINATION ADDRESS (if different from Consignee address)		
11. SHIPPING PAPER/WAYBILL IDENTIFICATION NO.					
<b>IV. HAZARDOUS MATERIAL(S) SPILLED (NOTE: REFERENCE 49 CFR SECTION 172.101.)</b>					
12. PROPER SHIPPING NAME		13. CHEMICAL/TRADE NAME		14. HAZARD CLASS	15. IDENTIFICATION NUMBER (e.g. UN 2764, NA-2020)
16. IS MATERIAL A HAZARDOUS SUBSTANCE? <input type="checkbox"/> YES <input type="checkbox"/> NO			17. WAS THE RQ/MET? <input type="checkbox"/> YES <input type="checkbox"/> NO		
<b>V. CONSEQUENCES OF INCIDENT, DUE TO THE HAZARDOUS MATERIAL</b>					
18. ESTIMATED QUANTITY HAZARDOUS MATERIAL RELEASED (include units of measurement)		19. FATALITIES	20. HOSPITALIZED INJURIES	21. NON-HOSPITALIZED INJURIES	
22. NUMBER OF PEOPLE EVACUATED					
23. ESTIMATED DOLLAR AMOUNT OF LOSS AND/OR PROPERTY DAMAGE, INCLUDING COST OF DECONTAMINATION OR CLEANUP (Round off in dollars)					
A. PRODUCT LOSS	B. CARRIER DAMAGE	C. PUBLIC/PRIVATE PROPERTY DAMAGE	D. DECONTAMINATION/CLEANUP	E. OTHER	
24. CONSEQUENCES ASSOCIATED WITH THE INCIDENT: <input type="checkbox"/> VAPOR (GAS) DISPERSION <input type="checkbox"/> MATERIAL ENTERED WATERWAY/SEWER			NONE OTHER		
<input type="checkbox"/> SPILLAGE <input type="checkbox"/> FIRE <input type="checkbox"/> EXPLOSION <input type="checkbox"/> ENVIRONMENTAL DAMAGE					
<b>VI. TRANSPORT ENVIRONMENT</b>					
25. INDICATE TYPE(S) OF VEHICLE(S) INVOLVED: <input type="checkbox"/> TANK CAR <input type="checkbox"/> RAIL CAR <input type="checkbox"/> TOFCO/OC <input type="checkbox"/> AIRCRAFT		<input type="checkbox"/> CARGO TANK	<input type="checkbox"/> VAN/TRUCK/TRAILER	<input type="checkbox"/> FLAT BED/TRUCK/TRAILER	
		<input type="checkbox"/> BARGE	<input type="checkbox"/> SHIP	<input type="checkbox"/> OTHER:	
26. TRANSPORTATION PHASE DURING WHICH INCIDENT OCCURRED OR WAS DISCOVERED: <input type="checkbox"/> EN ROUTE BETWEEN ORIGIN/DESTINATION <input type="checkbox"/> LOADING <input type="checkbox"/> UNLOADING <input type="checkbox"/> TEMPORARY STORAGE/TERMINAL					
27. LAND USE AT INCIDENT SITE: <input type="checkbox"/> INDUSTRIAL <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> RESIDENTIAL <input type="checkbox"/> AGRICULTURAL <input type="checkbox"/> UNDEVELOPED					
28. COMMUNITY TYPE AT SITE: <input type="checkbox"/> URBAN <input type="checkbox"/> SUBURBAN <input type="checkbox"/> RURAL					
29. WAS THE SPILL THE RESULT OF A VEHICLE ACCIDENT/DERAILMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES AND APPLICABLE, ANSWER PARTS A THRU C.					
A. ESTIMATED SPEED:		B. HIGHWAY TYPE: <input type="checkbox"/> DIVIDED/LIMITED ACCESS <input type="checkbox"/> UNDIVIDED	C. TOTAL NUMBER OF LANES: ONE THREE TWO FOUR OR MORE		SPACE FOR DOT USE ONLY

TEAR HERE

VII. PACKAGING INFORMATION: If the package is overpacked (consists of several packages, e.g. glass jars within a fiberboard box), begin with Column A for information on the innermost package.																																																																																																																																									
ITEM	A	B	C																																																																																																																																						
30. TYPE OF PACKAGING, INCLUDING INNER RECEPTACLES (e.g. Steel drum, tank car)																																																																																																																																									
31. CAPACITY OR WEIGHT PER UNIT PACKAGE (e.g. 55 gallons, 65 lbs.)																																																																																																																																									
32. NUMBER OF PACKAGES OF SAME TYPE WHICH FAILED IN IDENTICAL MANNER																																																																																																																																									
33. NUMBER OF PACKAGES OF SAME TYPE IN SHIPMENT																																																																																																																																									
34. PACKAGE SPECIFICATION IDENTIFICATION (e.g. DOT 17E, DOT 105A100, UN 1A1 or none)																																																																																																																																									
35. ANY OTHER PACKAGING MARKINGS (e.g. STC, 18716-55-88, Y1.4150/87)																																																																																																																																									
36. NAME AND ADDRESS, SYMBOL OR REGISTRATION NUMBER OF PACKAGING MANUFACTURER																																																																																																																																									
37. SERIAL NUMBER OF CYLINDERS, PORTABLE TANKS, CARGO TANKS, TANK CARS																																																																																																																																									
38. TYPE OF LABELING OR PLACARDING APPLIED																																																																																																																																									
39. IF RECONDITIONED OR REQUALIFIED	A. REGISTRATION NUMBER OR SYMBOL																																																																																																																																								
	B. DATE OF LAST TEST OR INSPECTION																																																																																																																																								
40. EXEMPTION/APPROVAL/COMPETENT AUTHORITY NUMBER, IF APPLICABLE (e.g. DOT E1012)																																																																																																																																									
VIII. DESCRIPTION OF PACKAGING FAILURE: Check all applicable boxes for the package(s) identified above.																																																																																																																																									
41. ACTION CONTRIBUTING TO PACKAGING FAILURE		42. OBJECT CAUSING FAILURE																																																																																																																																							
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43. HOW PACKAGE(S) FAILED	44. PACKAGE AREA THAT FAILED	45. WHAT FAILED ON PACKAGE(S)																																																																																																																																							
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# Federal Register

Monday  
June 19, 1989

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## Part III

# Office of Management and Budget

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**Privacy Act of 1974; Final Guidance  
Interpreting the Provisions of Public Law  
100-503, Computer Matching and Privacy  
Act of 1988; Notices**

## OFFICE OF MANAGEMENT AND BUDGET

### Privacy Act of 1974; Final Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988

**AGENCY:** Office of Management and Budget.

**ACTION:** Issuance of final guidance.

**SUMMARY:** These Guidelines implement the provisions of Pub. L. 100-503, the Computer Matching and Privacy Protection Act of 1988. This Act amends the Privacy Act of 1974 to establish procedural safeguards affecting agencies' use of Privacy Act records in performing certain types of computerized matching programs. The Act requires agencies to conclude written agreements specifying the terms under which matches are to be done. It also provides due process rights for record subjects to prevent agencies from taking adverse actions unless they have independently verified the results of a match and given the subject 30 days advance notice. Oversight is accomplished in a variety of ways: by having agencies (a) publish matching agreements, (b) report matching programs to OMB and Congress; and (c) establish internal boards to approve their matching activity. The Act becomes effective on July 19, 1989.

**EFFECTIVE DATE:** These Guidelines are effective June 19, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Veeder, Office of Management and Budget, Office of Information and Regulatory Affairs, Information Policy Branch, Telephone (202) 395-4814.

**SUPPLEMENTARY INFORMATION:** Pub. L. 100-503, the Computer Matching and Privacy Protection Act of 1988 was enacted on October 18, 1988. It will become effective on July 19, 1989. The Act requires OMB to issue guidance on interpreting and implementing its provisions no later than the eighth month after enactment, or June 19, 1989.

On April 19, 1989, OMB published for public comment proposed interpretive guidance. The notice especially invited comment on the applicability of the Act to two examples of matching activity:

- The entering of information received orally into an automated data base for the purpose of determining eligibility for a Federal benefit;
- The automation by a Federal agency of data from a Federal non-automated system of records.

The proposal also solicited examples of routine administrative matches using Federal personnel or payroll records that should be excluded from the Act's

coverage, and matches for which Data Integrity Boards should waive the Act's benefit/cost requirement.

At the expiration of the comment period, OMB had received comments from 42 respondents. These fell into five categories:

- The Congress (2)
- Federal agencies (24)
- State agencies (14)
- Public Interest Groups (1)
- Public Employee Unions (1)

In addition to providing comments on the specific areas requested, most commentators also chose to comment more broadly on the guidance.

Although the following guidance is published in final form, OMB realizes that the implementation of this complex Act will undoubtedly require the issuance of additional and clarifying guidance and intends to monitor the agencies implementation closely to that end.

#### Section By Section Analysis

##### *Section 5a(1)(a)—Matching Program Definition*

##### Caution Against Eluding the Act's Requirements

Several commentators advised OMB to explicitly warn agencies, both Federal and State, against engaging in sophistry or subterfuge, to avoid the reach of the Act. They pointed out, for example, that a Federal agency might combine two disparate systems of records containing payroll and personnel records of Federal employees into a single system and match data sets within the new system. This activity would not be covered, although a match between the two separate systems would have been. In other cases, agencies might convert automated records to paper records to perform a manual match, albeit one of more limited scope. OMB thinks these recommendations are pertinent and has added cautionary advice to the matching program definition section to caution agencies not to engage in activities intended to frustrate the normal application of the Act.

##### Distinction Between Federal to Federal and Federal to Non-federal Matches

OMB, in making a literal interpretation of the statutory definition of a matching program, distinguished between Federal-to-Federal and Federal-to-non-Federal matches. In the former case, the necessary components were that there were two or more automated systems of records and that the comparison of records in these systems was done via a computer. This is essentially the classic definition of a matching program that OMB put forth in

guidance issued in 1979 and revised in 1982. It is the definition that the General Accounting Office has asserted in its study of the costs and benefits of conducting matching programs: Computer Matching: Assessing its Costs and Benefits, GAO/PEMD-87-2, November 1986.

In defining the Federal/non-Federal match, however, OMB read the statute as applying to both automated and non-automated records so long as the comparison was done via computer. Several commentators objected to placing a heavier administrative burden on State and local agencies engaged in matching with Federal agencies than on Federal agencies matching with each other. One commentator suggested that the OMB reading was in error and that the modifier "automated" could properly and reasonably be read as modifying all of the data bases involved.

Other commentators pointed out that the clear intent of the Act was to deal with situations where large numbers of individuals were subjected to automated scrutiny with potentially adverse consequences, and that in actual practice, that meant automated comparisons of automated data bases. Certainly the Privacy Act itself contains an expression of Congressional concern on precisely this point: that use of computers could "greatly magnify the harm" to an individual.

After careful consideration of these arguments, OMB has revised the definition to clarify that in both Federal-to-Federal and Federal-to-non-Federal matching programs what is involved is the automated comparison of two or more automated record sets, whether systems of records or non-Federal records. In taking this position, OMB is extremely concerned that agencies not adopt data exchange practices that deliberately avoid the reach of the Act where compliance would otherwise be required. The guidance has been revised to cite this concern and give examples of such improper practices.

##### State Agencies' Concerns

A number of State respondents asserted that matches between the Social Security Administration and State agencies in which SSA merely provided information with which to update a benefits file to reflect an across-the-board cost-of-living allowance change should not be considered a matching program under the Act. They asserted that the match, if one occurred, was really done at SSA, and disclosure to the States of COLA information did not involve a computerized comparison of two

independent record sources. OMB is sympathetic to the concerns of the States, but unpersuaded by this analysis. The record as maintained by the state agency is a State record, not a Federal record. The matching process involves comparing information provided by a Federal source to that record using a computer to perform the comparison. There are potentially adverse consequences for the record subject. Eligibility for a Federal benefit program is involved. Clearly, this is a Federal-to-non-Federal matching program contemplated by the Act.

It should be noted that States are free to update their files for across-the-board cost-of-living adjustments without matching with Federal records. Since the COLA percentages are known in advance, are uniform, and are automatic, States can compute these COLA's themselves. Actions taken based on benefit levels recomputed by the States without the involvement of a Federal system of records matching program would be subject to the laws and regulations governing such programs rather than the Matching Act.

An additional State concern relates to how to conduct the independent verification required by the Act for these kinds of matches. That is discussed below.

#### *Entering of Information Received Orally*

A final consideration in the definition of what constitutes a matching program for purposes of the Act is the response of the commentators to specific questions OMB raised in its proposed guidance. Specifically, we asked whether when a State benefits clerk takes information received orally from an applicant and enters it into an automated Federal Privacy Act system of records the provisions of the Matching Act come into play. A majority of respondents thought that to the extent that no record existed at the State level, such a query would not be covered. However, if the query produced a record that the State would ultimately maintain, it was covered. Since it is unlikely that a State would never memorialize such a query, this issue is perhaps more academic than real. In any case, the guidance has been amended to add this example.

#### *Section 5a(1)(d)—Matching Purpose*

##### Elements of Matching Purpose

Several commentators found OMB's discussion of the elements of the purpose section less clear than OMB intended. The section has been redrafted.

#### *Ultimate Purpose*

Two commentators took exception to OMB's assertion that peripheral consequences of a matching program, even if having an ultimate adverse result, could be discounted in determining whether a match was covered. They urged instead that OMB broadly construe the purpose section to take in the ultimate purpose of the match (by which OMB assumes they mean any ultimate consequence, whether intended or unintended). OMB is unpersuaded by this rationale. The thrust of the Act is to cover matching programs whose purpose is clear and deliberate and intended to accomplish one of three stated purposes: to determine eligibility for a Federal benefit, compliance with benefit program requirements, or to effect recovery of improper payments or delinquent debts from current or former beneficiaries. The more tenuous the nexus between the operation of the program and these purposes is the harder it is to find any applicability of the Act. Having said that, however, OMB remains concerned that agencies not avoid the reach of the Act by disguising the real purpose of their matching programs.

#### *Section 5a(3)—Exclusions From the Matching Definition*

##### Statistical Matches for Research Purposes

Two commentators criticized the inclusion of "pilot matches" in this excluded category. In the past, agencies have done pilot matches using a small data subset to determine whether it would be productive to perform a match of the entire dataset. Given the requirement in the Act for benefit/cost analysis, OMB thinks that pilot matches are a reasonable approach to determining whether to engage in a broader matching activity. OMB does not think that this kind of information gathering activity should be subject to the administrative requirements that attach to regular matches so long as the agency keeps these matches solely in a statistical information gathering channel. Nevertheless, OMB is sensitive to the concerns raised and has amended the guidance to require Data Integrity Board approval of all pilot matches. It is at this point that the Board can decide whether to conduct a matching program and comply with the Act's full requirements, or a pilot program. If a full matching program, the results of the match may be used to take adverse action. If a pilot program, they may not.

#### *Law Enforcement Agency Exclusion*

One agency recommended that the guidance specifically cite the Inspector General (IG) as a law enforcement agency. OMB failed to realize that commentators would be unaware that the Inspector General Act gave the Inspector criminal law enforcement responsibilities. While we are hesitant to include a comprehensive list of eligibles we have amended the guidance to cite that part of the IG office that performs criminal law enforcement activities as eligible for the exclusion.

Two commentators were concerned that the proposed guidance on the law enforcement exclusion was too brief. OMB has expanded the discussion in the final version to make it clear that that exception may only be taken by an agency or component that is designated by statute (either Federal or State) as having a criminal law enforcement responsibility as its primary purpose and that it may only claim the exclusion after the initiation of an investigation of a named person or persons in order to gather evidence.

#### *Routine Administrative Matches Involving Federal Personnel Records*

One commentator suggested that OMB define the word "predominantly" as used in the exclusion. OMB has included a definition of this word to mean that the data base either be established to contain records about Federal employees, or that the majority of records in the data base be about such employees.

Two commentators urged that OMB provide additional examples of what is covered by the exclusion. OMB has amended the guidance to reflect this consideration.

#### *Section 5a(1)(c)—Federal Benefit Program*

##### Former Beneficiaries

One commentator noted that the guidance was silent as to the Act's coverage of former beneficiaries and urged that OMB explicitly cite them. OMB agrees. The Act provides as one of its purposes the recouping of Federal benefits payments. Certainly this process could involve those who are no longer beneficiaries but remain in default. The guidance has been amended to include this category of beneficiaries.

*Section 5a.b.c—Agency Responsibilities/Definitions*

**Expand Discussion of Agencies' Roles/Responsibilities**

Several commentators suggested that OMB expand the definition section to clarify the roles and responsibilities of the recipient, source, and Non-Federal agencies, especially in terms of which is responsible for publishing matching notices in the *Federal Register*. OMB agrees and has expanded this section.

*Section 6a—Giving Prior Notice*

**Direct Notice Only**

One commentator strongly urged OMB to state that the Act requires direct notice to the record subject, and that *Federal Register* constructive notice is insufficient to meet this requirement. OMB has considered this comment, and agrees that the section requires direct notice at the time of application. It does not, however, require direct notice at other times. Examination of the statutory wording shows that the Act calls merely for "notice" subsequent to the direct notice at the time of application. This is understandable, since the point at which it is most critical to provide notice is at the point when the individual has the option of providing or withholding information. Notice at this point permits the applicant to make an informed choice about participating. Moreover, for matching programs whose purpose is to locate individuals in order, for example, to recoup payments improperly granted, direct notice may well be impossible. OMB thinks that the guidance as written gives agencies the flexibility to deal with the many circumstances involved in conducting matching programs. However, OMB intends to monitor agencies' activities to ensure that constructive notice does not become an administratively convenient substitute for direct notice when direct notice is achievable without an unreasonable expenditure of resources.

**Cite Section (e)(3) Requirement**

Two commentators cited the Privacy Act's (e)(3) notice as one appropriate place for the matching notice and urged OMB to cite it as such in the guidance. OMB agrees and has done so.

**Federal/State Responsibilities**

One State agency asserted that the Federal agency should do the notice. OMB thinks that if a Federal form is involved in the application for a benefit, it is within the power of the Federal agency creating the form to provide the notice and it should do so. For periodic

notice, however, Federal agencies may wish to accomplish this requirement through the State or local governmental benefit providers. OMB has included a discussion of this issue in the section on agency definitions and roles and responsibilities.

*Section 6b—Constructing Matching Agreements*

**Existing Agreement Carryover**

One commentator suggested that the guidance assert that existing agreements could suffice until the program was due for renewal and only at that time should they be revised to include the terms of the Matching Act. Similarly, a State commentator suggested that the existing State/Federal agreements should be sufficient. It is OMB's interpretation that the statute clearly requires that by the effective date of the Act, any matching programs conducted by an agency must have agreements approved by the Data Integrity Boards. The statute sets out the terms of those agreements. To the extent that existing agreements include these elements, they will suffice. If they do not, any missing elements must be agreed to by the participants.

**Duplication and Rediscovery**

Two commentators strongly urged OMB to expand the discussion of this section to substantially restrict any subsequent use of the matching data by the recipient agency. Both cited the "essential purpose" wording of the statute as being more restrictive than the "compatibility standard" that applies to routine use disclosures. OMB agrees and has expanded the discussion of this point in the guidance.

*Section 6b—Publication Requirements*

**Inclusion of System(s) of Records**

One commentator suggested that the matching notice identify the system or systems of records from which records will be matched. OMB agrees and has adopted this suggestion.

*Section 6f—Independent Verification, Notice and Wait Period, Opportunity to Contest Adverse Finding*

**Combining the Independent Verification and Statutory Notice Requirements**

Federal benefits program matching as well as the matching of Federal employee records occurs across a wide spectrum of purposes and consequences. It would be of dubious utility to apply the verification requirements equally to all matches and argue that a match that results in an adverse consequence of the loss of, for example, a tuition assistance payment should receive the same due

process procedures as one that results in the loss of an AFDC payment or Food Stamp Program eligibility. This is not to say that agencies can ignore or minimize these requirements for matches that result in less severe consequences; but only that they should bring some degree of reasonableness to the process of verifying data.

Conservation of agency resources dictates that the procedures for affording due process be flexible and suited to the data being verified and the consequence to the individual of making a mistake. In some cases, if the source agency has established a high degree of confidence in the quality of its data and it can demonstrate that its quality control processes are rigorous, the recipient agency may choose to expend fewer resources in independently verifying the data than otherwise. Indeed, several commentators urged OMB to make it clear that in certain circumstances, the verification and notice and wait steps can be combined into one. OMB agrees and has amended the sections to permit this occurrence; but, to make it clear that agencies should think through carefully when to use this compression and not consider it a routine process. To ensure that this consideration takes place, OMB has amended the guidance to require that the Data Integrity Boards make a formal determination of when to compress these two due process steps. OMB will collect these decisions as part of the reporting process.

**Time Period for Notice**

One commentator suggested that because the waiting period provided by the Matching Act was 30 days (or more if program statutes or regulations provided a longer period), the guidance should reflect this minimum period and not arbitrarily add transit time. On reflection, OMB agrees and has amended the section.

**Coercing Record Subjects**

One commentator expressed concern lest agencies attempt to coerce subjects into accepting the agencies adverse finding. The solution offered was to prohibit agencies from taking any action until the expiration of the 30 days notice and wait period. In order to forestall some speculative behavior on the part of the agency, this solution could put the government in the position of providing a benefit it knows improper to a recipient who has acknowledged his ineligibility. OMB has not adopted the suggestion but has included a caution to agencies against coercing individuals into agreeing with the finding.

### Section 7a—Data Integrity Board Operation Location

Two commentators were unclear about whether State and local agencies were required to have such boards. OMB has amended the guidance to make it clear that the Data Integrity Board requirement applies only to Federal agencies. Another commentator suggested that having approval by both a source and a recipient Board was unnecessary. OMB disagrees. A significant purpose of the Act is to ensure that all parties to a matching program have enough information to make a reasoned decision about participating and that each understands the process whereby the data will be matched. One should note that there are civil remedies provisions in the Privacy Act as well as criminal penalties for wrongful acts. It is in the interest of all parties to ensure that the Privacy Act requirements are adequately met.

### Operation

One commentator urged OMB to flatly prohibit delegation of approval of matching agreements. OMB agrees and has amended the guidance to make it clear that approvals (and denials) must be done by the Board itself. Another commentator suggested OMB establish a time limitation for Board determinations. OMB thinks this is a management matter best left to agency discretion but has added an instruction to agencies that they ensure expeditious consideration.

### Review and Reports

One commentator recommended OMB expand the review and report requirements of the Data Integrity Boards. OMB agrees but is in the process of revising Circular No. A-130, Appendix I, to include these requirements. The commentator also suggested that OMB tell agencies to treat the annual review period as beginning on the effective date of the Act. OMB will include this suggestion in the revision.

### Section 7c—Benefit Cost Requirement

#### Waivers of Requirement

One commentator recommended that OMB make it clear that the benefit-cost requirement be waived for matches done either pursuant to a statutory requirement or for a law enforcement purpose. OMB disagrees. The statute permits waiver for statutory matches, but only for the first year. The intent of the drafters was to recognize that the presumption the Act imposes of a favorable benefit-cost ratio was irrelevant in the face of a statutory

mandate to match. Nevertheless, the Act requires a benefit-cost determination in subsequent years in order to provide information to Congress about required matches that are not achieving a cost-beneficial result. As to law enforcement matches, the statute already excludes a significant portion of such matches from all of the Act's requirements. Another commentator recommended that the requirement for all matches done to recoup payments be waived since the results, i.e., ultimate recoveries, are generally uncertain. This suggestion brings up an important point about conducting these assessments: there will be a range of data available to agencies in performing benefit-cost analysis, some of which will be helpful and some of which will be merely speculative. Where data in an agency's hands clearly indicates an unfavorable ratio, prudent management dictates abandoning the match. Where the reverse is true, agencies should conduct the match. Where the data is unclear, agencies should gather data to permit a better analysis. This may mean conducting a program on the basis of data that, while speculative, suggests that the result will be favorable, and then subjecting the results of the match to careful analysis to determine if that is the case. OMB expects that for the first year, benefit-cost analysis will be a less rigorous process than for subsequent years.

Two commentators suggested that waivers be granted only where the analysis was impossible to do or would be unhelpful. OMB has not adopted this suggestion finding this standard to be too subjective to provide a solid basis on which to waive the requirement. OMB will include as a reflection of Congressional intent, a statement that waivers should be granted sparingly if at all.

#### Benefit-Cost Checklist and Methodology

Two commentators urged that a checklist providing a step-by-step methodology for accomplishing benefit-cost analysis be appended to the guidance. OMB agrees that this should be done and is working on such a checklist but is doubtful that it will be ready in time to be added to the final guidance. Rather than delay publication past the statutory deadline, OMB will issue the checklist as soon as it is available in the same manner as it issues the guidance itself. OMB will also cite the GAO Report, Computer Matching: Assessing its Costs and Benefits, GAO/PEMD-87-2, November 1986, in the section.

### Other Comments

#### Disclosures for Matching

Several commentators urged OMB to discuss the ways in which records could be disclosed for a matching program. One in particular wanted to know if there was an exception in section (b) of the Privacy Act for matching disclosures. OMB has added a discussion of the procedural requirements to the matching agreements section. It notes that agencies must find an exception to the written consent rule in section (b) or obtain the written consent of the record subject to the disclosure; there is no specific exception for a matching program.

#### Denial of an IG Proposal

One commentator urged that the guidance make it clear that disapproval of an Inspector General proposed match could take place only because of a defect in the matching agreement. OMB agrees that the proper role of the Board is not to engage in management decisions about the utility of conducting matching programs, but to ensure that such programs are carried out in strict compliance with the terms of the Privacy Act, as amended by Pub. L. 100-503, and "all relevant statutes, regulations and guidelines." Nevertheless, it is the responsibility of the Board to ensure that each of the terms of the agreements are complied with. That determination may require them to go beneath the written agreement to examine the matching process itself. For example, if the agreement indicates that matching subjects have been given individualized notice at the time of the application on the application form itself, the Board may wish to examine the form to see if this notice is adequate.

#### Training

One commentator suggested that OMB set up training in the Act's provisions. OMB agrees and is working on a training program that will address this suggestion.

#### Office of Management and Budget Guidelines on the Conduct of Matching Programs

1. *Purpose:* These Guidelines augment and should be used with the "Office of Management and Budget (OMB) Guidelines on the Administration of the Privacy Act of 1974," issued on July 1, 1975, and supplemented on November 21, 1975, and Appendix I to OMB Circular No. A-130, published on December 24, 1985 (see 50 FR 52738).

They are intended to help agencies relate the procedural requirements of the Privacy Act (as amended by Pub. L. 100-503, the Computer Matching and Privacy Protection Act of 1988—hereinafter referred to as the Computer Matching Act), with the operational requirements of automated matching programs. These are policy guidelines applicable to the extent permitted by law. They do not authorize activities that are not permitted by law; nor do they prohibit activities expressly required to be performed by law. Complying with these Guidelines, nonetheless, does not relieve a Federal agency of the obligation to comply with the provisions of the Privacy Act, including any provisions not cited in these Guidelines.

2. *Authority:* Section 6 of Pub. L. 100-503, The Computer Matching and Privacy Protection Act of 1988, requires OMB to issue implementation guidance on the Amendments.

3. *Scope:* These guidelines apply primarily to all Federal agencies subject to the Privacy Act of 1974. For this purpose, the Privacy Act relies upon the definition in the Freedom of Information Act (FOIA) 5 U.S.C. 552 at (e): "any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency." For the purposes of these guidelines, components of departments, e.g., the Health Care Financing Administration of the Department of Health and Human Services, are not considered individual agencies.

Note that the definition incorporates the "agency" definition used in the Administrative Procedure Act (5 U.S.C. 551 at (1)) which also contains a series of categories that are not covered, including State and local governments.

The Computer Matching Act amendment, however, brings State and local governments within the ambit of the Privacy Act when they are engaging in certain types of matching activities; but only in conjunction with a Federal agency that is itself subject to the Privacy Act, and only when a Federal system of records is involved in the match.

In general, a State or local agency or agent thereof, that is either: (1) Providing records to a Federal agency for use in a matching program covered by the Act; or (2) receiving records from a Federal agency's system of records for use in a matching program covered by the Act, must comply with certain of the Act's provisions. What State and local

governments must do to meet the requirements of the Act is explained in paragraph 9 below.

4. *Effective Date:* These guidelines are effective on June 19, 1989.

5. *Definitions:* The Computer Matching Act is an amendment of the Privacy Act of 1974 and the provisions of the former should be read within the context of the latter, and all the terms originally defined in the Privacy Act of 1974 apply.

It is especially important to note that the Computer Matching Act does not extend Privacy Act coverage to those not originally included. Thus, the subjects of Federal systems of records covered by the Computer Matching Act are "individuals," i.e., U.S. citizens and aliens lawfully admitted for permanent residence.

Two definitions that are especially relevant to matching programs are:

- "Record" which the Privacy Act defines as an item of information about an individual, including his or her name or some other identifier; and,
- "System of Records" which is a collection of such "records" from which an agency retrieves information by reference to an individual identifier.

In addition, the Computer Matching Act provides the following new terms:

- a. *Matching Program.* At its simplest, a matching program is the comparison of records using a computer. The records must themselves exist in automated form in order to perform the match. Manual comparisons of, for example, printouts of two automated data bases, are not included within this definition. Note, however, participating agencies should not create data sharing methods merely to avoid the reach of the Act where the Act's application would otherwise be reasonable and proper. A matching program covers not only the actual computerized comparison, but the investigative followup and ultimate action, if any.

The Computer Matching Act covers two kinds of matching programs: (1) Matches involving Federal benefits programs and, (2) matches using records from Federal personnel or payroll systems of records.

(1) *Federal Benefits Matches.* The Act defines a Federal benefits matching program as:

"any computerized comparison of two or more automated systems of records or a system of records with non-Federal records, by applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs \* \* \* [i.e., any program administered or

funded by the Federal government, or by any agent or State on behalf of the Federal government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals], \* \* \* for the purpose of establishing or verifying the eligibility of or continuing compliance with statutory and regulatory requirements, or [for the purpose of] recouping payments or delinquent debts under such Federal benefit programs." (See 5 U.S.C. 552a(a)(8) and (12).)

The elements of this definition are discussed below:

(a) *Computerized Comparison of Data.* The record comparison must be a computerized comparison involving records from:

- Two or more automated systems of records (i.e., systems of records maintained by Federal agencies that are subject to the Privacy Act); or,
- A Federal agency's automated system of records and automated records maintained by a non-Federal (i.e., State or local government) agency or agent thereof. To be covered, matches of these records must be computerized. Some examples of computerized matches include the following:

A State benefits clerk accesses an automated Federal system of records and enters data received from an applicant and maintained in automated form by the State. The clerk matches this information with the Federal information, makes an eligibility determination and updates the State data base.

A State benefits clerk enters data about applicants for a Federal benefit program into an automated data base. At the end of the week, the State agency sends current applicant tapes to the Federal benefits agency which matches them against its own automated system of records and reports the results to the State.

A Federal agency operating a benefits program sends a tape of defaulters to the Office of Personnel Management to match against an OPM automated system of records containing information about Federal retirees in order to locate defaulters.

(b) *Categories of Subjects Covered.* The Computer Matching Act provisions cover only the following categories of record subjects:

- Applicants for Federal benefit programs (i.e., individuals initially applying for benefits);
- Program beneficiaries (i.e., individual program participants who are currently receiving or formerly received benefits);

—Providers of services to support such programs (i.e., those who are not the primary beneficiaries of Federal benefits programs, but may derive income from them—health care providers, for example).

(c) *Types of Programs Covered.* Only Federal benefit programs providing cash or in-kind assistance to individuals are covered by this definition. State programs are not covered. Federal programs not involving cash or in-kind assistance are not covered. Programs using records about subjects who are not individuals as defined by section (a)(2) of the Privacy Act—U.S. citizens or aliens lawfully admitted for permanent residence—are not covered.

(d) *Matching Purpose.* The match must have as its purpose one or more of the following:

- Establishing or verifying initial or continuing eligibility for Federal benefit programs; or
- Verifying compliance with the requirements—either statutory or regulatory—of such programs; or
- Recouping payments or delinquent debts under such Federal benefit programs.

It should be noted that the four elements, (i.e., computerized comparison, categories of subjects, Federal benefit program, and matching purpose) all must be present before a matching program is covered under the provisions of the Computer Matching Act. Thus, for example, if the Department of Education matched a student loan recipient data base with a Veterans Administration (VA) education benefit recipient data base for the purpose of ensuring that both agencies were maintaining the most current and accurate home address information, that would not be covered since the "matching purpose" is not one of the three enumerated above. If, however, the purpose of the match were to identify recipients who were receiving benefits in excess of those to which they were entitled, the match would be covered.

Moreover, elements that are peripheral to the match, even if within the definitions above will not raise a match to the Act's coverage. For example, the Federal Parent Locator Service conducts matches to locate absentee parents who are not paying child support. Such matches may result in the identified spouse being ordered to commence payments, and some of those payments may go to recoup payments made from a Federal benefit program such as Aid to Families with Dependent Children. Because the recoupment is not the primary purpose of the match, but

only an incidental consequence, such matches would not be covered.

(2) *Federal Personnel or Payroll Records Matches.* The Computer Matching Act also includes matches comparing records from automated Federal personnel or payroll systems of records, or such records and automated records of State and local governments. Again, it should be noted that the comparison must be done by using a computer; manual comparisons are not covered. Matches in this category must be done for other than "routine administrative purposes" as defined in paragraph 5a(3)(e) below. In some instances, a covered match may take place within a single agency. For example, an agency may wish to determine whether any of its own personnel are participating in a benefit program administered by the agency, and are not in compliance with the program's eligibility requirements. This internal match will certainly result in an adverse action if ineligibility is discovered. Therefore, it is covered by the requirements of the Computer Matching Act. Again, agencies should not attempt to avoid the reach of the Act by, for example, improperly combining dissimilar systems into a single system, matching data within the system to make an eligibility determination, and arguing that the match is not covered because only one system of records is involved.

(3) *Exclusions from the Definition of a Matching Program.* The following are not included under the definition of matching programs. Agencies operating such programs are not required to comply with the provisions of the Computer Matching Act, although they may be required to comply with any other applicable provisions of the Privacy Act.

(a) *Statistical Matches Whose Purpose is Solely to Produce Aggregate Data Stripped of Personal Identifiers.* This does not mean that the data bases used in the match must be stripped prior to the match, but only that the results of the match must not contain individually identifiable data. Implicit in this exception is that this kind of match is not done to take action against specific individuals; although, it is possible that the statistical inferences drawn from the data may have consequences for the subjects of the match as members of a class or group. For example, a continuing matching program that shows one geographical area consistently experiencing a higher default rate than others may result in more rigorous scrutiny of applicants from that area, but would not be a covered matching program.

(b) *Statistical Matches Whose Purpose is in Support of Any Research or Statistical Project.* The results of these matches need not be stripped of identifiers, but they must not be used to make decisions that affect the rights, benefits or privileges of specific individuals. Again, it should be noted that this provision is not intended to prohibit using any data developed in these matches to make decisions about a Federal benefit program in general that may ultimately affect beneficiaries.

(c) *Pilot Matches.* This exclusion could also cover so-called "pilot matches," i.e., small scale matches whose purpose is to gather benefit/cost data on which to premise a decision about engaging in a full-fledged matching program. Because of concern about possible misuse of these matching programs to avoid full compliance with the Matching act, OMB will require that pilot matches must be approved by the agency Data Integrity Boards. It is at this point that the agency can decide whether to conduct a statistical data gathering match without consequences to the subjects or a full-fledged program where results will be used to take specific action against record subjects.

(d) *Law Enforcement Investigative Matches Whose Purpose is to Gather Evidence Against a Named Person or Persons in an Existing Investigation.* Certain matches performed in support of civil or criminal law enforcement activities that otherwise would be covered because they seek to establish or verify Federal benefit eligibility or use Federal personnel or payroll records, are excluded from coverage by this section. To be eligible for exclusion, the match must be done by an agency or component whose principal statutory function involves the enforcement of criminal laws, i.e., an agency that is eligible to exempt certain of its record systems under section (j)(2) of the Privacy Act such as the Federal Bureau of Investigation, the Drug Enforcement Agency, or components of agencies' Office of Inspectors General.

The match must flow from an investigation already underway which focuses on a named person or named persons; "fishing expeditions" in which the subjects are identified generically as "program beneficiaries," are not eligible for this exclusion (note that the investigation may be into either criminal or civil law violations). The use of the phrase "person or persons" in this context broadens the exclusion to include subjects that are other than "individuals" as defined by the Privacy Act. Thus, for example a business entity could be the named subject of the

investigation, while the records matched could be those of customers or clients. This does not mean however, that the rights afforded by the Privacy Act are extended by this section to other than "individuals."

Finally, the match must be for the purpose of gathering evidence against the named person or persons.

(e) *Tax Administration Matches.*

There are four specific categories exclusions for matches using "tax information." While that term is not defined in the Computer Matching Act, the Report accompanying the House version of the Act, H.R. 4699, cites "tax returns" and "tax return information" as the tax information that is covered by the exclusion. Those terms are defined in Section 6103 of Title 26 U.S.C. at (b)(1)-(b)(3). It is clear from these sections that the information covered is under the control of the Internal Revenue Service (IRS) of the Department of the Treasury since the definitions speak of information that is "filed with the Secretary" or "received by, prepared by, furnished to, or collected by the Secretary." Moreover, Section 6103(a) prohibits Federal, State and local governmental employees from disclosing tax information except as authorized by the Internal Revenue Code. This is not to say that all information in the possession of the IRS is covered by the exclusion; only tax information. Thus, for example, personnel records relating to the management of the IRS workforce would not be covered.

The exclusion covers the following:

- Matches done pursuant to Section 6103(d) of the Tax Code. These matches involve disclosures of taxpayer return information to State tax officials. For matches covered by this exclusion, neither the Federal disclosing entity nor the State recipient need comply with the provisions of the Computer Matching Act.
- Matches done for the purposes of "tax administration" as that term is defined in Section 6103(b)(4) of the Internal Revenue Code: "The term 'tax administration' means the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party; and the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions; and includes assessment, collection,

enforcement, litigation, publication, and statistical gathering functions under such laws, statutes or conventions." While this definition is very broad and covers a great deal of discretionary activities on the part of IRS management, it is not intended to exempt all IRS activities from the Act's coverage; only those that truly relate to administration of the nation's tax system (as opposed to management of the IRS workforce, for example). Thus, the exclusion will permit the IRS to continue to match tax returns with interest and dividend statements, for example. It should be noted that the Bureau of Alcohol, Firearms, and Tobacco of the Treasury Department also has collection and enforcement authority under the Internal Revenue Code, and tax administration is, therefore, a part of that agency's responsibilities as well.

- Tax refund offset matches done pursuant to the Deficit Reduction Act of 1984 (DEFRA). That Act contains procedures for affording matching subjects due process that are analogous to those contained in these guidelines.
- Tax refund offset matches conducted pursuant to statutes other than the DEFRA provided OMB finds the due process provisions of those statutes "substantially similar" to those of the DEFRA. OMB will periodically revise these guidelines to add such programs as such statutes are enacted. Agencies should notify OMB promptly when they think an existing statute provides an exemption in this category.

(f) *Routine Administrative Matches*

*Using Federal Personnel Records.* These are matches between a Federal agency and other Federal agencies or between a Federal agency and non-Federal agencies for administrative purposes that use data bases that contain records predominantly relating to Federal personnel. The term predominantly means that the percentage of records in the system that are about Federal employees must be greater than of any other category therein contained. In some cases, Federal employees will predominate because of absolute numbers; in others, because they represent the largest single category. The term "federal personnel" is defined by the Act as: "officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor

benefits)." It should be noted that by including individuals eligible for survivor benefits in the category, the Act covers individuals who may never have been employed by the Federal government.

Matches whose purpose is to take "any adverse financial, personnel, disciplinary or other adverse action against Federal personnel \* \* \*" whose records are involved in the match, are not excluded from the Act's coverage.

Examples of matches that are excluded include an agency's disclosure of time and attendance information on all agency employees to the Department of the Treasury in order to prepare the agency's payroll; or disclosure of Department of Defense (DoD) Reserve Officer identifying information to a State in order to validate and update addresses of Reservists residing in the State; or disclosure of retiree annuity files from the DoD to the Department of Veterans Affairs in order to determine the percentage of total annuity each agency is responsible for paying.

Note that this exclusion does not bring under the Act's coverage matches that may ultimately result in an adverse action. It only requires that their purpose not be intended to result in an adverse action. Thus, in the DoD/State reservist match example, the consequence of the match may well be that a reservist is dropped from the program because no address can be found for him or her. This result, however negative, would not bring the match under the Act's coverage since its primary purpose was only to update an address listing.

(g) *Internal Agency Matches Using Only Records From the Agency's System of Records.* Internal agency matching is excluded on the same basis as Federal personnel record matching above: provided no adverse intent as to a Federal employee motivates the match. Section (b)(1) of the Privacy Act permits agencies to disseminate Privacy Act records to agency employees on an official need-to-know basis. This exclusionary provision does not disturb that principle, except where Federal personnel records are involved. Thus, for example, the Social Security Administration could match with the Health Care Financing Administration to detect and ultimately recoup overpayments for a specific Department of Health and Human Services program. That match would not be covered by the provisions of the Computer Matching Act.

Moreover, the mere presence of Federal employee records in the data bases being matched would not

necessarily bring the match under the Act's coverage. To be covered, the records would have to be predominantly those relating to Federal employees and the primary intent would have to be to take an adverse action of some kind against the Federal employees specifically. If the Department of Education matched its student loan defaulter file against its own employee data base in order to detect and take action against Education employees who have defaulted, that match would be covered by the Act. The same department matching its undergraduate student loan defaulter file against its medical school loan defaulter file in order to determine the incidence of repeat defaulters, would not be covered, even though some of those in the data base might be Federal employees.

(h) *Background Investigation and Foreign Counter-intelligence Matches.* Matches done in the course of performing a background check for security clearances of Federal personnel or Federal contractor personnel are not covered. Nor are matches done for the purpose of foreign counter-intelligence.

b. *Recipient Agency.* Recipient agencies are Federal agencies (or their contractors) that receive records from the Privacy Act systems of records of other Federal agencies or from State and local governments to be used in matching programs.

*Responsibilities.* Recipient agencies are responsible for publishing matching notices in the Federal Register pursuant to the requirements of the Matching Act described below. Where a recipient agency is not the actual beneficiary of the matching program, it may negotiate with the actual beneficiary agency for reimbursement of the costs incurred in publishing. A recipient agency that is the beneficiary of the program should take the lead in performing a benefit-cost analysis and share that analysis with source agencies to help their Data Integrity Boards make a determination about providing data for the match. Recipient agencies are also responsible for making the matching program report to OMB and the Congress discussed below.

c. *Source Agency.* A source agency is a Federal agency that discloses records from a system of records to another Federal agency to a State or local governmental agency to be used in a matching program. It is also a State or local governmental agency that discloses records to a Federal agency to be used in a matching program. The Computer Matching Act does not cover matching between non-Federal entities. A Federal source agency is required to have its own Data Integrity Board

approve the agreement controlling the match; Non-Federal agencies are not required to have such boards. Source agencies are not responsible for publishing the notice of the match or reporting the match to OMB and Congress.

d. *Non-Federal Agency.* A non-Federal agency is a State or local governmental agency that receives records contained in a system of records from a Federal agency to be used in a matching program. State and local agencies are not responsible for publishing notices in the Federal Register or making reports to OMB and the Congress. Nor are they required to establish Data Integrity Boards to approve matching agreements. They should be prepared to provide to Federal source agencies data needed by those agencies to carry out their reporting and other responsibilities, e.g., benefit-cost analysis.

e. *Federal Benefit Program.* See paragraph 5a(1)(c) above.

6. *Conducting Matching Programs.* The following applies to Federal agencies. Requirements pertaining to non-Federal agencies are in paragraph 9 below.

Agencies undertaking matching programs covered by the Computer Matching Act will need to make sure that they comply with the following requirements:

a. *Comply with Privacy Act Systems of Records and Disclosure Provisions:* Federal agencies must ensure that they identify the systems of records involved in the matching programs and have published the necessary notices. Moreover, because the Matching Act does not itself authorize disclosures from systems of records for the purposes of conducting matching programs, agencies must justify any disclosures under section (b) of the Privacy Act. This means obtaining the written consent of the record subjects to the disclosure or relying on one of the 12 exceptions to the written consent rule. To rely on exception (b)(3), for a routine use, agencies must have published their intent to disclose in the Federal Register 30 days prior to any actual disclosure.

b. *Give Prior Notice to Record Subjects.* There are two ways in which record subjects can receive notice that their records may be matched:

—By direct notice when there is some form of contact between the government and the subject, e.g., information on the application form when they apply for a benefit or in a notice that arrives with a benefit that they receive;

—By constructive notice, e.g., publication of systems notices, routine use disclosures, and matching programs in the Federal Register.

For front-end eligibility verification programs whose purpose is to validate an applicant's initial eligibility for a benefit and later to determine continued eligibility, agencies should provide direct notice by amending the application form where necessary to enlarge the statement provided pursuant to section (e)(3) of the Privacy Act so that applicants are put on notice that the information they provide may be verified through a computer match. Agencies should also provide periodic notice whenever the application is renewed, or at the least, during the period the match is authorized to take place, in a notice accompanying the benefit. Providers of services should be given notice on the form on which they apply for reimbursement for services provided.

In some cases, constructive notice may have to suffice. For example, a Federal agency that discloses records to a State or local government in support of a non-Federal matching program is not obligated to provide direct notice to each of the record subjects; Federal Register publication in this instance is sufficient. Moreover, in some instances, it may not be possible to provide direct notice—in matches done to locate individuals, in emergency situations where health and safety reasons argue for a swift completion of the match; or in investigative matches where direct notice immediately prior to a match would provide the subject an opportunity to alter behavior.

In any case, notice to the record subject should be done well before a matching program commences. It should be part of the normal process of implementing a Federal benefits program.

c. *Matching Notices—Publication Requirements.* Agencies must publish notices of the establishment or alteration of matching programs in the Federal Register at least 30 days prior to conducting such programs. Only one notice is required and the recipient Federal agency in a match between Federal agencies or in a match in which a non-Federal agency discloses records to a Federal agency is responsible for publishing such notices. Where a State or local agency is the recipient of records from a Federal agency's system of records, the Federal source agency is responsible for publishing the notice. Such notices should contain the following information:

- Name of participating agency or agencies;
- Purpose of the match;
- Authority for conducting the matching program. (It should be noted that the Computer Matching Act provides no independent authority for carrying out any matching activity);
- Categories or records and individuals covered;
- Inclusive dates of the matching program;
- Address for receipt of public comments or inquiries.

Copies of proposed matching notices must accompany reports of proposed matches submitted pursuant to section (r) of the Privacy Act as amended. See OMB Circular No. A-130, Appendix I, as amended.

d. *Preparing and Executing Matching Agreements.* Agencies should allow sufficient lead time to ensure that matching agreements can be negotiated and signed in time to secure Data Integrity Board decisions. Federal agencies receiving records from or disclosing records to non-Federal agencies for use in matching programs are responsible for preparing the matching agreements and should solicit relevant data from non-Federal agencies where necessary. In cases where matching takes place entirely within an agency under the Federal personnel or payroll matching provisions, the agency may satisfy the matching agreement requirements by preparing a Memorandum of Understanding between the system of records managers involved, and presenting that to the Data Integrity Board for consideration.

Agreements must contain the following:

- Purpose and Legal Authority.* Since the Computer Matching Act provides no independent authority for the operation of matching programs, agencies should cite a specific Federal or State statutory or regulatory basis for undertaking such programs.
- Justification and Expected Results.* An explanation of why computer matching as opposed to some other administrative activity is being proposed and what the expected results will be.
- Records Description.* An identification of the system of records or non-Federal records, the number of records, and what data elements will be included in the match. Projected starting and completion dates for the program should also be provided. Agencies should specifically identify the Federal system or systems of records involved.
- Notice Procedures.* A description of the individual and general periodic

notice procedures. See paragraph 6.a., above.

- Verification Procedures.* A description of the methods the agency will use to independently verify the information obtained through the matching program. See paragraph 6.f., below.
- Disposition of Matched Items.* A statement that information generated through the match, will be destroyed as soon as it has served the matching program's purpose and any legal retention requirements the agency establishes in conjunction with the National Archives and Records Administration or other cognizant authority.
- Security Procedures.* A description of the administrative and technical safeguards to be used in protecting the information. They should be commensurate with the level of sensitivity of the data.
- Records Usage, Duplication and Redisclosure Restrictions.* A description of any specific restrictions imposed by either the source agency or by statute or regulation on collateral uses of the records used in the matching program. The agreement should specify how long a recipient agency may keep records provided for a matching program, and when they will be returned to the source agency or destroyed. In general, recipient agencies should not subsequently disclose records obtained for a matching program and under the terms of a matching agreement for other purposes absent a specific statutory requirement or where the disclosure is essential to the conduct of a matching program. The essential standard is a strict test that is more restrictive than the "compatibility" standard the Privacy Act establishes for disclosures made pursuant to section (b)(3): "for a routine use." Thus, under the essential standard, the results of the match may be disclosed for follow-up and verification or for civil or criminal law enforcement investigation or prosecution if the match uncovers activity that warrants such a result. This is not to say that agencies may never use the results of a matching program to make other eligibility determinations. For example, in the case of State/SSA COLA adjustment matches, States may use the results of this match to adjust payment levels for other benefits programs. If they do so, however, the subsequent uses must be included as part of the overall matching program as to the matching agreements, Federal Register notice, and the reporting requirements.

Moreover, the Act's due process requirements will apply to the subsequent adjustments as well.

- Records Accuracy Assessments.* Any information relating to the quality of the records to be used in the matching program. Record accuracy is important from two standpoints. In the first case, the worse the quality of the data, the less likely a matching program will have a cost-beneficial result. In the second case, the Privacy Act requires Federal agencies to maintain records they maintain in systems of records to a standard of accuracy that will reasonably assure fairness in any determination made on the basis of the record. Thus an agency receiving records from another Federal agency or from a non-Federal agency needs to know information about the accuracy of such records in order to comply with the law. Moreover, the Privacy Act also requires agencies to take reasonable steps to ensure the accuracy of records that are disclosed to non-Federal recipients.

—*Comptroller General Access.* A statement that the Comptroller General may have access to all records of a recipient agency or non-Federal agency necessary to monitor or verify compliance with the agreement. It should be understood that this requirement permits the Comptroller General to inspect State and local records used in matching programs covered by these agreements.

e. *Securing Approval of Data Integrity Boards.* Before an agency may participate in a matching program, the agency's Data Integrity Board must have evaluated the proposed match and approved the terms of the matching agreement. Agencies should ensure that boards consider matching proposals presented to them expeditiously so as not to cause bureaucratic delays to necessary programs. (See paragraph 7.d. below, for appeals of Board disapprovals).

f. *Reports to OMB and Congress.* See OMB Circular No. A-130, Appendix I as amended.

g. *Providing Due Process to Matching Subjects.* The Computer Matching Act prescribes certain due process requirements that the subjects of matching programs must be afforded when matches uncover adverse information about them.

—*Verification of Adverse Information.* Agencies may not premise adverse action upon the raw results of a computer match. Any adverse

information so developed must be subjected to investigation and verification before action is taken. Federal benefits program matching as well as the matching of Federal employee records occurs across a wide spectrum of purposes and consequences. It would be of dubious utility to apply the verification requirements equally to all matches and argue that a match that results in an adverse consequence of the loss of, for example, a tuition assistance payment should receive the same due process procedures as one that results in the loss of an AFDC payment or Food Stamp Program eligibility. This is not to say that agencies can ignore or minimize these requirements for matches that result in less severe consequences; but only that they should bring some degree of reasonableness to the process of verifying data.

Conservation of agency resources dictates that the procedures for affording due process be flexible and suited to the data being verified and the consequence to the individual of making a mistake. In some cases, if the source agency has established a high degree of confidence in the quality of its data and it can demonstrate that its quality control processes are rigorous, the recipient agency may choose to expend fewer resources in independently verifying the data than otherwise. In such cases, it may be appropriate to combine the verification and notice requirements into a single step, especially if the record subject is the best source for verification. In certain circumstances, therefore, the verification and notice and wait steps can be combined into one. However, agencies should think through carefully when to use this compression and not consider it a routine process.

To ensure that this consideration take place, it will be the responsibility of the Data Integrity Boards to make a formal determination as to when it is appropriate to compress the verification and notice and wait periods into a single period. OMB intends to collect these decisions as part of the reporting process.

In many cases, the individual record subject is the best source for determining a finding's validity, and he or she should be contacted where practicable. In other cases, the payer of a benefit will have the most accurate record relating to payment and should be contacted for verification. Note that, in some cases, contacting the subject initially may permit him or her to conceal data relevant to a decision; and,

in those cases, an agency may elect to examine other sources. Absolute confirmation is not required; a reasonable verification process that yields confirmatory data will provide the agency with a reasonable basis for taking action.

As to applicants for Federal benefits programs whose eligibility is being verified through a matching program, agencies may not make a final determination until they have completed the due process steps the Act requires. This does not mean, however, that they are required to place an applicant on the rolls pending a determination, but only that they may not make a final decision.

For matching subjects receiving benefits, however, agencies may not suspend or reduce payments until the due process steps have been completed.

—*Notice and Opportunity to Contest.*

Agencies are required to notify matching subjects of adverse information uncovered and give them an opportunity to explain prior to making a final determination. Again, this does not mean that an applicant must be put on the rolls pending his or her explanation, but only that the agency may not make a final determination. Current benefits recipients, however, may not have those benefits suspended or reduced pending the expiration of this period.

Individuals may have 30 days to respond to a notice of adverse action, unless a statute or regulation grants a longer period. The period runs from the date of the notice until 30 calendar days later, including transit time.

If an individual contacts the agency within the notice period and indicates his or her acceptance of the validity of the adverse information, agencies may take immediate action to deny or terminate. However, agencies are cautioned against attempting to coerce a record subject into accepting the result. Agencies may also take action if the period expires without contact.

If the Federal benefit program involved in the match has its own due process requirements, those requirements may suffice for the purposes of the Computer Matching Act, provided they are at least as strong as that Act's provisions.

In any case, if an agency determines that there is likely to be a potentially significant effect on public health or safety, it may take appropriate action, notwithstanding these due process provisions.

7. *Establishing Data Integrity Boards:* The Computer Matching Act requires that each Federal agency that acts as either a source or recipient in a

matching program, establish a Data Integrity Board to oversee the agency's participation. Non-Federal governmental entities are not required to have such boards. It should be noted that the fact that records about an agency's personnel are used in a matching program does not automatically trigger this requirement. Because, for example, the Office of Personnel Management (OPM) asserts government-wide ownership of the system of records containing the Federal employee Official Personnel Folder (OPF), disclosures from this system of records involve OPM, not the employing agency. There are many small agencies that will never directly disclose records from their own systems of records for matching purposes and they are thus not required to establish Data Integrity Boards.

a. *Location and Staffing.* While the Act specifies neither the organizational level at which the Boards are to be established, nor their makeup (with two exceptions), it is clear from the context of the Data Integrity Board section that Congress expected agencies to place the Boards at the top of the organization and staff them with senior personnel. It is the intent of these guidelines not to dictate a specific structure but to suggest ways of complying with this expectation.

—*Location.* As to location, because the Boards are to serve a coordinating function, it would be inappropriate to locate them at other than the departmental level (or its agency equivalent). This is not to say that subordinate boards at component levels may not be useful to do the preliminary work necessary to provide a matching program proposal to the senior Board for approval. Indeed, in large agencies with many matching programs, this will likely be the rule. But, the approval should come from the top, and this argues for the placement suggested above.

—*Staffing.* The Act requires that the Board consist of senior agency officials designated by the agency head. The only two mandatory members are the Inspector General of the agency (if any) who may not serve as Chairman, and the senior official responsible for the implementation of the Privacy Act who has been designated pursuant to 44 U.S.C. 3506(b). OMB recommends that the agency Privacy Act Officer be designated as the Board's Secretary.

—*Operation.* While much of the work of the Board may be delegated to less senior members—for example, the compilation of reports, advising of program officials, and maintaining

and disseminating information about the accuracy and reliability of data used in matching—the approval of matching agreements may not be delegated.

The Board should meet often enough to ensure that agency matching programs are carried out efficiently, expeditiously and in conformance with the Privacy Act, as amended.

**b. Review Responsibilities.** Because matching agreements are key to the implementation of the Computer Matching Act, the Act makes their review the foremost responsibility of the Boards. Boards are responsible for approving or disapproving matching programs based upon their assessment of the adequacy of these agreements. They should ensure that their reasons for either approving or denying are well documented. Agency officials proposing matching programs should ensure that they provide the Data Integrity Board with all of the information relevant and necessary to permit it to make an informed decision, including, where appropriate, a benefit/cost analysis. Note that both the Federal source and recipient agencies must have the matching agreement ratified by their boards.

**—Review of Proposals to Conduct or Participate in Matching Programs.**

The Board must review the matching agreements that support each proposed matching program and find them in conformance with the provisions of the Computer Matching Act as well as any other relevant statutes, regulations, or guidelines. Boards are specifically responsible for determining when to compress the due process steps of verification and notice and wait into a single step. A matching agreement should remain in force for only so long as necessary to accomplish the specific matching purpose; indeed, it automatically expires at the end of 18 months unless within 3 months prior to the actual expiration date, the Data Integrity Board finds that the program will be conducted without change and each party certifies that the program has been conducted in compliance with the matching agreement. Under this finding, the Board may extend the agreement for 1 additional year.

**—Annual Review.** The Act requires Data Integrity Boards to conduct an annual review of all matching programs in which the agency has participated as either a source or recipient agency. This review has two focuses: to determine whether the matches have been, or are being, conducted in accordance with the

appropriate authorities and under the terms of the matching agreements; and, to assess the utility of the programs in terms of their costs and benefits. The Act suggests that this latter review as it pertains to recurring programs, should result in a basis for continuing participation in, or operation of, such programs. The Computer Matching Act also requires the Boards to review annually agency recordkeeping and disposal policies and practices for conformance with the Act's provisions. These reviews should take place within the context of the annual review referenced above. In addition, the Boards may review and report on matching activities not covered by the Computer Matching Act.

**c. Benefit/Cost Analysis.** The Computer Matching Act requires that a benefit/cost analysis be a part of an agency decision to conduct or participate in a matching program. The requirement occurs in two places: in matching agreements which must include a justification of the proposed match with a "specific estimate of any savings"; and, in the Data Integrity Board review process.

The intent of this requirement is not to create a presumption that when agencies balance individual rights and cost savings, the latter should inevitably prevail. Rather, it is to ensure that sound management practices are followed when agencies use records from Privacy Act systems of records in matching programs. Particularly in a time when competition for scarce resources is especially intense, it is not in the government's interests to engage in matching activities that drain agency resources that could be better spent elsewhere. Agencies should use the benefit/cost requirement as an opportunity to reexamine programs and weed out those that produce only marginal results.

While the Act appears to require a favorable benefit/cost ratio as an element of approval of a matching program, agencies should be cautious about applying this interpretation in too literal a fashion. For example, the first year in which a matching program is conducted may show a dramatic benefit/cost ratio. However, after it has been conducted on a regular basis (with attendant publicity), its deterrent effect may result in much less favorable ratios. Elimination of such a program, however, may well result in a return to the prematch benefit/cost ratio. The agency should consider not only the actual savings attributable to such a program, but the consequences of abandoning it.

For proposed matches without an operational history, benefit/cost analyses will of necessity be speculative. While they should be based upon the best data available, reasonable estimates are acceptable at this stage. Nevertheless, agencies should design their programs so as to ensure the collection of data that will permit more accurate assessments to be made. As more and more data become available, it should be possible to make more informed assumptions about the benefits and costs of matching. One source of information about conducting benefit-cost analysis as it relates to matching programs is the GAO Report, "Computer Matching, Assessing its Costs and Benefits," GAO/PEMD-87-2, November, 1986. Agencies may wish to consult this report as they develop methodologies for performing this analysis.

Because matching is done for a variety of reasons, not all matching programs are appropriate candidates for benefit/cost analysis. The Computer Matching Act tacitly recognizes this point by permitting Data Integrity Boards to waive the benefit/cost requirement if they determine in writing that such an analysis is not required. It should be noted, however, that the Congress expected that such waivers would be used sparingly. The Act itself supplies one such waiver: if a match is specifically required by statute, the initial review by the Board need not consider the benefits and costs of the match. Note that this exclusion does not extend to matches undertaken at the discretion of the agency. However, the Act goes on to require that when the matching agreement is renegotiated, a benefit/cost analysis covering the preceding matches must be done. Note that the Act does not require the showing of a favorable ratio for the match to be continued, only that an analysis be done. The intention is to provide Congress with information to help it evaluate the effectiveness of statutory matching requirements with a view to revising or eliminating them where appropriate.

Other examples of matches in which the establishment of a favorable benefit/cost ratio would be inappropriate are:

- A match of a system of records containing information about nurses employed at VA hospitals with records maintained by State nurse licensing boards to identify VA nurses with "impaired licenses", i.e., those who have had some disciplinary action taken against them.
- A match whose purpose is to identify and correct erroneous data, e.g.,

Project Clean Data which was run to correct and eliminate erroneous Social Security Numbers.

—Selective Service System matching to identify 18-year-olds for draft registration purposes.

d. *Appeals of Denials.* If a Board disapproves a matching agreement, the Computer Matching Act permits any party to the agreement to appeal that disapproval to the Director of the Office of Management and Budget. While this literally means that a recipient agency (whether Federal or non-Federal) could appeal the refusal of a source agency to approve an agreement, the actual results of such cross agency appeals, even if successful, are unlikely to result in the implementation of a matching program since the source agency may still properly refuse to disclose the necessary Privacy Act records. Nothing in the appeal process is intended to result in one agency being able to force another agency to participate unwillingly in a matching program.

Accordingly, OMB will only entertain appeals from senior agency officials who are parties to a proposed matching agreement that has been disapproved by the agency's own Data Integrity Board. By senior officials, OMB means the Inspector General of an agency or the head of an operating division carrying out the matching program.

The appeal should be forwarded to the Director, Office of Management and Budget, Washington, DC 20503 within 30 days following the Board's written disapproval. The following documentation should accompany the appeal:

- Copies of all of the documentation accompanying the initial matching agreement proposal;
- A copy of the Board's disapproval and reasons therefor;
- Evidence supporting the cost-effectiveness of the match;
- Any other information relevant to a decision, e.g., timing considerations, the public interest served by the match, etc.

The Director will promptly notify Congress of receipt of an appeal and of his or her decision. A decision to approve a matching agreement will not be effective until 30 days after it is so reported to Congress. The decision of the Director shall be based upon the information submitted.

OMB expects that this appeal process will be rarely used. One way to ensure its rarity is for agencies to present only well thoughtout and thoroughly documented proposals to the Boards for decisions.

e. *Information Maintenance and Dissemination Responsibilities.* The Act anticipates that the Data Integrity Boards will be an information resource on matching for the agency. Thus, while the full Board may actually convene only a few times each year to consider matching program proposals, the Act requires a continuing presence to carry out these additional functions. The Board, therefore, should designate a representative to answer questions on matching both from within the agency and from outside entities. This point of contact should be able to advise on what actions are needed to comply with the provisions of the Computer Matching Act, and to collect and disseminate information on the quality of the records used in matching programs.

8. *General Reporting Requirements:* The reporting requirements of the Data Integrity Boards will be contained in OMB Circular No. A-130, Appendix I. Matching reports are to be included in the general Privacy Act implementation reporting requirements outlined in that Circular.

9. *Specific Responsibilities of Non-Federal Agencies:* It is not the intent of this Act to affect, nor do its provisions reach, State and local governments using their own records for matching purposes. Nor does the Act reach State or local matching programs using records from Federal systems of records for purposes other than those defined in the Act as for a "matching program."

Thus, for example, a Federal agency could disclose information about beneficiaries of a Federal program to a State agency in order to permit the State to conduct a matching program to determine eligibility for a State public assistance program. So long as the purpose was to validate eligibility for the State as opposed to the Federal benefit program, the Computer Matching Act would not come into play.

If however, the Federal agency disclosed the names and income levels of its own Federal employees to a State under these circumstances, the matching requirements would have to be met since this match would be covered

under the "Federal employee personnel and payroll" provisions.

Non-Federal agencies intending to participate in covered matching programs are required to do the following:

- Execute matching agreements prepared by a Federal agency or agencies involved in the matching program;
- Provide data to Federal agencies on the costs and benefits of matching programs;
- Certify that they will not take adverse action against an individual as a result of any information developed in a matching program unless the information has been independently verified and until 30 days after the individual has been notified of the findings and given an opportunity to contest them.
- For renewals of matching programs, certify that the terms of the agreement have been followed.

10. *Sanctions:* The Computer Matching Act specifies that neither a Federal nor a non-Federal agency may disclose a record for use in a matching program if either has reason to believe the recipient is not meeting the terms of the matching agreement or the due process requirements of the Computer Matching Act. This provision does not create an affirmative duty on the part of a source agency to investigate a recipient agency's level of compliance. However, if a source agency receives information that would lead it to conclude that the recipient agency was not in compliance, it must consult with that agency before continuing to participate in the matching program.

Moreover, it should be noted that the civil remedies provisions of the Privacy Act are available to matching record subjects who can demonstrate that they have been harmed by an agency's violation of the Privacy Act or its own regulations. A successful litigant is entitled under the Privacy Act to receive at least \$1,000 and reasonable attorney's fees. Given the large numbers of record subjects typically involved in a matching program, agencies should be especially diligent in guarding against actions that would create liabilities.

S. Jay Plager,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 89-14525 Filed 6-16-89; 8:45 am]

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# federal register

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Monday  
June 19, 1989

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## Part IV

# Department of Commerce

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National Oceanic and Atmospheric  
Administration

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50 CFR Part 229

The Taking of Marine Mammals Incidental  
to Commercial Fishing Operations;  
Interim Exemption for Commercial  
Fisheries; Proposed Rule

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 229

[Docket No. 81140-9105]

RIN 0648-AC65

## Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

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

**ACTION:** Proposed rule.

**SUMMARY:** NOAA Fisheries issues a proposed rule that would govern the reporting of the take of marine mammals incidental to commercial fishing operations and requests public comments. These regulations would implement the portion of the recent amendments to the Marine Mammal Protection Act of 1972 (MMPA) which requires commercial fishermen to report the take of marine mammals in the course of commercial fishing. The intended effect of this rule is to establish a program and report/log format through which commercial fishing vessel owners engaged in Category I, Category II, and Category III fisheries may report the taking of marine mammals as required by the recent amendments to the MMPA.

**DATES:** Comments on this proposed rule must be received by July 19, 1989.

**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; Douglas Beach, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, 508-281-9254; Charles Oravetz, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702, 813-893-3366; James Lecky, Southwest Region, National Marine Fisheries Service, 300 S. Ferry St., Terminal Island, CA 90731, 213-514-6664; Brent Norberg, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115, 206-526-6110; Dr. Steve Zimmerman, Alaska Region, National Marine Fisheries Service, 709 W. 9th. St., Fed. Bldg. 453, P.O. Box 21668, Juneau, AK 99802, 907-586-7233.

## 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, the Congress amended the MMPA based on a proposal developed by representatives of the fishing industry and conservation community.

Section 114, added by Pub. L. 100-711 on November 23, 1988, replaces certain provisions of the MMPA for granting incidental take authorizations (including small take exemptions) to most commercial fishermen with an interim exemption system until October 1, 1993. Section 114 gives commercial fishermen a 5-year exemption from the incidental taking prohibition 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 issue General Permits for many fisheries. The information collected in conjunction with the exemption system and information on the status and trends of marine mammal populations would 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 the Congress a proposed system of authorizing incidental takes by January 1, 1992.

On January 27, 1989, NOAA Fisheries published an advance notice of proposed rulemaking and proposed List of Fisheries associated with the exemption system (54 FR 4154) and requested comments. A final List of Fisheries categorizing fisheries as either Category I (a frequent incidental taking

of marine mammals), Category II (an occasional incidental taking of marine mammals), or Category III (a remote likelihood of, or no known incidental taking of, marine mammals) (54 FR 16072) and an interim rule governing the exemption system (54 FR 21910) have also been published by NOAA Fisheries. The interim rule requires that vessel owners or their authorized agents engaged in a Category I or Category II fishery register with and obtain an Exemption Certificate from NOAA Fisheries to engage lawfully in any Category I or II fishery. This initial Exemption Certificate will be valid from July 21, 1989, to December 31, 1990, provided reporting requirements are met. Subsequent Exemption Certificates would be issued on a calendar year basis (i.e., January 1 to December 31) and be issued only if reporting requirements and other conditions of the Exemption Certificate were met.

The 1988 amendments require that vessel owners holding an exemption certificate begin compiling information regarding incidental takings of marine mammals as of July 21, 1989. This information shall be reported at the close of each fishing season or annually to the Secretary of Commerce. Such reports shall include the following:

- (1) The type of fishery engaged in by the owner's vessel;
- (2) The date and approximate time of any incidental taking of a marine mammal;
- (3) The area in which the incidental taking occurred;
- (4) The fishing gear used at the time of the incidental taking;
- (5) The species of fish involved; and for each incidental taking
- (6) The number of marine mammals involved;
- (7) The species of marine mammals involved; and whether the marine mammals were
- (8) Deterred from gear or catch;
- (9) Incidentally injured;
- (10) Incidentally killed; or
- (11) Lethally removed to protect gear, catch, or human life.

In addition, the 1988 amendments require vessel owners in Category III fisheries to report all lethal takings of marine mammals. 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, Indian treaty tribes, and other interested parties, NOAA Fisheries issues this proposed rule that would govern the reporting of the take of marine mammals incidental

to commercial fishing operations under the authority of section 112 and section 114(k) of the MMPA.

#### Comments and Responses

NOAA Fisheries received several comments concerning the reporting system when it published its advance notice of proposed rulemaking and proposed List of Fisheries (54 FR 4154). These comments are summarized below along with NOAA Fisheries' responses. These comments were considered in developing this proposed rule.

1. Commenters recommended that the reporting system be easy for the fishermen to use, such as using existing logbooks or fish tickets, and should clearly explain how a fisherman who participates in both a Category I and Category II fishery should report. One commenter also suggested that NOAA stress the need to report gear damage and fish losses as well as incidental taking. One commenter recommended that NOAA Fisheries develop a reporting form, in consultation with fishermen and fishing groups, to be used in Category I or II fisheries.

NOAA Fisheries has developed a proposed report/log form to be used in Category I or Category II fisheries (see Appendix), and has been discussing the form with fishing groups and other interested parties. Reports would require information on: The fishery, fishing effort, gear type, and fish species involved; the marine mammal species (or description of the animal, if species is not known), number, date, and location of marine mammal incidental takes (including takes by harassment); type of interaction and any injury to the marine mammal; a description of any intentional takes, i.e., efforts to deter animals to protect gear, catch, or human life by non-lethal or lethal means; and any loss of fish or gear caused by marine mammals. With prior approval by NOAA Fisheries, alternate report forms, issued by individual states or Fishery Management Councils, which collect the information required by NOAA Fisheries, would be accepted.

2. One commenter recommended that fishermen should be required to maintain the following detailed information: The types and quantities of fishing gear carried; where, when, and how fishing gear was deployed and retrieved; the species and quantities of fish, birds, and mammals caught in each set; any fish loss, fish damage, or gear damage caused by marine mammals; ancillary information, such as weather conditions or currents, thought to have contributed to the interactions with marine mammals.

Some of this information would be required; however, NOAA Fisheries does not believe that Section 114 of the MMPA requires all fishermen to maintain such detailed records. Collection of additional detailed information, however, may be incorporated in an alternate verification program.

3. One commenter recommended that fishermen be required to report all takings, not just entanglement, serious injury, or death, since they may not be qualified to judge what is "serious" and all information and data are necessary to assess the magnitude of the incidental take problem. Another commenter believed that only entanglements, serious injuries, or deaths should be considered to be incidental takes for reporting purposes.

Section 114(c) requires fishermen to report "whether the marine mammals were deterred from gear or catch, incidentally killed, or lethally removed to protect gear, catch, or human life." Therefore, NOAA Fisheries proposes to require the reporting of all takings, including harassment, that occur incidental to a Category I or Category II fishery.

4. Commenters were fearful how the report data would be used, and that isolated instances might subject a fishery to unnecessary restrictions. Another commenter was fearful that the lack of mortality reports in Category III fisheries will be interpreted as a failure to report (rather than the lack of taking) which will prompt stricter requirements in the future.

Report data would be evaluated in conjunction with data from observer and alternate verification programs and other available information. NOAA Fisheries does not intend to restrict fisheries unless the best available information indicates that marine mammal stocks are being adversely affected. Because Category III fisheries have a remote likelihood of taking a marine mammal, NOAA Fisheries expects few such reports.

#### Reporting Requirements

Exemption Certificate holders would be required to maintain accurate daily logs of fishing effort, incidental takes of marine mammals, and other information determined necessary by the Assistant Administrator in such form as prescribed by NOAA Fisheries. A current report/log form would have to be kept on board covering the current fishing trip and would have to be made available for inspection upon request by any state or federal enforcement agent authorized to enforce the MMPA or designated agent of NOAA Fisheries.

NOAA Fisheries would provide report/log forms for recording the information required to all Exemption Certificate holders for use in maintaining records and filing reports.

These reports, consisting of a copy of the required daily log, would be required for each vessel engaged in a Category I and Category II fishery, whether or not marine mammals were taken. Reports would be submitted at the end of each fishing season or an annual report would be submitted to NOAA Fisheries on or before December 31 of each year covering all Category I and II fisheries for which each Exemption Certificate holder is registered. The submission of reports on a regular basis throughout the year, however, would be encouraged. Exemption Certificate renewal requests would include these reports, if not previously submitted, or a new Exemption Certificate would not be issued. If a fishing vessel was not used in a Category I or Category II fishery during a calendar year for which it was registered, a report to that effect would be required. With prior approval by NOAA Fisheries, alternate report forms, issued by individual states or Fishery Management Councils, which collect the information required by NOAA Fisheries, would be accepted.

Marine mammal report/log forms would require information on: The fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal, if species is not known), number, date, and location of marine mammal incidental takes (including takes by harassment); type of interaction and any injury to the marine mammal; a description of any intentional takes, i.e., efforts to deter animals to protect gear, catch, or human life by non-lethal or lethal means; and any loss of fish or gear caused by marine mammals. The proposed report/log form which would be used to collect this information is included as an Appendix.

Vessel owners engaged in Category III fisheries would report all lethal incidental takings of marine mammals by contacting the nearest NOAA Fisheries Office within 10 days of the return from the fishing trip during which the incidental take occurred. NOAA Fisheries would then incorporate this information into its data management system.

#### Information Management

NOAA Fisheries is developing an information management system to compile, store, process, and analyze data received from fishermen's reports, observer and verification programs, and

other sources. To protect the confidentiality of this data, information from the system will be made available to the public only in an aggregate form which does not directly or indirectly disclose the identity or business of any person. Such information would 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.

To maintain the confidentiality of individual vessel owner reports, only their Exemption Certificate number, Coast Guard documentation number, state registration number, and the fisheries the vessel was engaged in would be required on the individual report/log forms. Further, confidential or proprietary information would 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 exceptions (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

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 was that no significant impact on the human environment will occur as a result of this rule and that no environmental impact statement was 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. This rule would 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) a 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 the addition of 50 CFR 229.06(c) and 229.07(b) to the regulations will not have a significant economic impact on a substantial number of small entities. NOAA Fisheries has reviewed the proposed rule and has initially determined that the economic impact of this rule is limited to the amount of time necessary for registered fishermen to enter daily whether they had an interaction with any marine mammals. NOAA Fisheries estimates that on average this will require 2.5 minutes per day fished for fishermen operating in Category I or II fisheries. NOAA Fisheries estimates that on average commercial fishermen operating in Category III fisheries will spend 20 minutes per year to record and report the incidental take of marine mammals. 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 submitted to the Office of Management and Budget for approval. The collection which is subject to the Paperwork Reduction Act is found at 50 CFR 229.06(c) and 229.07(b). Public reporting burden for this collection of information is estimated to average 2.5 minutes per day fished for fishermen operating in Category I or II fisheries to report the incidental take of marine mammals. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. NOAA Fisheries estimates that on average commercial fishermen operating in Category III fisheries will spend 20 minutes per year to record and report the incidental take of marine mammals. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service, MMPA Exemption Task Force, 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 by themselves 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 in 50 CFR Part 229

Fisheries, Fishing vessels, Marine mammals, Reporting and recordkeeping.

#### Regulation Promulgation

For the reasons set out in the preamble, 50 CFR is proposed to be amended as follows:

#### PART 229—[AMENDED]

1. The authority citation for 50 CFR Part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. A new paragraph (c)(2) is added to § 229.6 as follows:

#### § 229.6 Issuance of exemption certificates.

\* \* \* \* \*

(c) \* \* \*

(2) *Reports.* (i) All Exemption Certificate holders must ensure that daily logs of fishing effort and incidental takes of marine mammals are accurately maintained on board the fishing vessel in such form as prescribed by the Assistant Administrator. Marine mammal report/log forms will require information on: The fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal, if species is not known), number, date, and location of marine mammal incidental takes (including takes by harassment); type of interaction and any injury to the marine mammal; a description of any intentional takes, i.e., efforts to deter animals to protect gear, catch, or human life by non-lethal or lethal means; and any loss of fish or gear caused by marine mammals. With prior approval by the National Marine Fisheries Service, alternate report forms, issued

by individual states or Fishery Management Councils, which collect the information required by the National Marine Fisheries Service, would be accepted.

(ii) A current report/log must be kept on board and must be made available for inspection upon request by any state or federal enforcement agent authorized to enforce the Act or any designated agent of the National Marine Fisheries Service.

(iii) A report, consisting of a copy of the required log, must be submitted to the National Marine Fisheries Service at the end of each fishing season or on or before December 31 of each year. This log shall include information for all

Category I or II fisheries for which each Exemption Certificate holder is registered, whether or not any marine mammal was taken. If a fishing vessel was not used in a Category I or Category II fishery for which it was registered, a report to that effect must be submitted.

\* \* \* \* \*

2. A new paragraph (b) is added to § 229.7 as follows:

**§ 229.7 Requirements for Category III fisheries.**

\* \* \* \* \*

(b) Vessel owners must report all lethal takes of marine mammals to the nearest National Marine Fisheries

Service office within 10 days of return from the fishing trip during which the incidental take occurred. The report must include the marine mammal species involved (or a description of the animal, if species is not known), date, location, and circumstances leading up to the taking.

\* \* \* \* \*

Date: June 13, 1989.

**James E. Douglas, Jr.,**  
*Deputy Assistant Administrator for Fisheries,  
National Oceanic and Atmospheric  
Administration.*

**Appendix**

**Note:** The following Appendix will not appear in the Code of Federal Regulations.

**BILLING CODE 3510-22-M**



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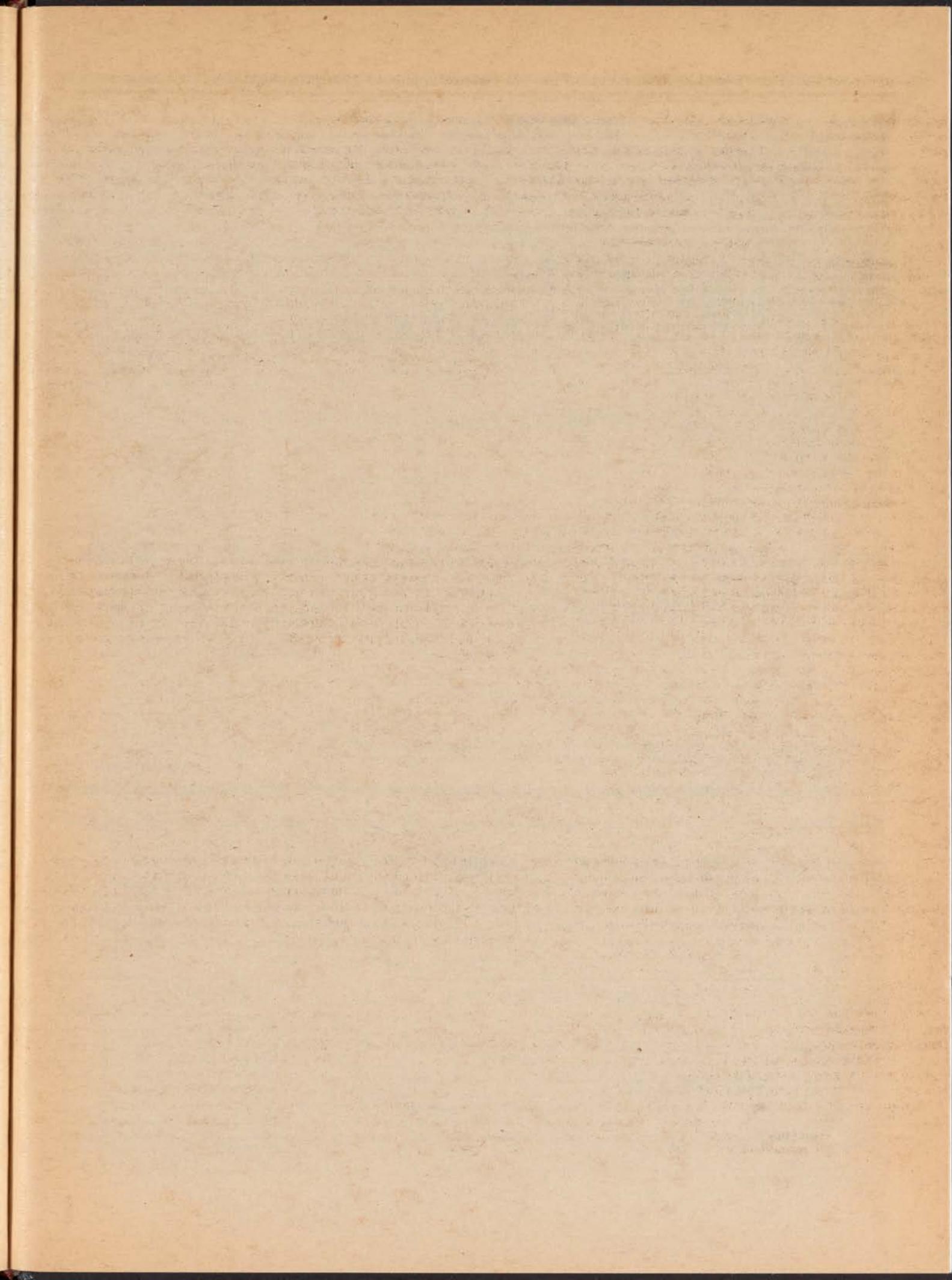
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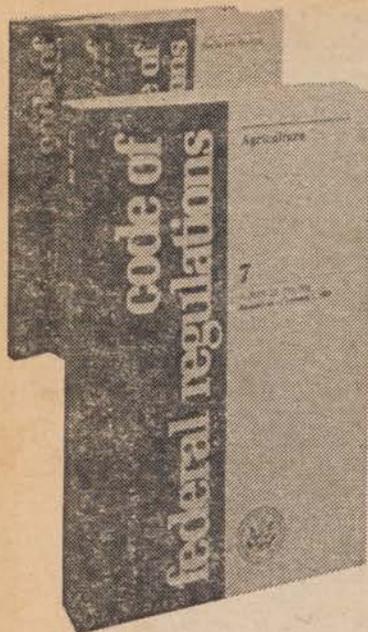
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