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Presidential Documents

Title 3—

The President

Proclamation 5991 of June 15, 1989

National Grasslands Week, 1989

By the President of the United States of America

A Proclamation

We Americans have been blessed with a fertile land of unparalleled beauty. It is the source of much of our country's strength and wealth. The great sweep of grasslands that crosses the continent—beginning below the border of Mexico and stretching into central Canada—is an ecological treasure.

Nearly 4,000,000 acres of grasslands, located in 11 States across the United States, are public property. These national grasslands constitute an invaluable resource for the American people. Archeologists, anthropologists, and rangeland ecologists have discovered enormous potential for scientific research in them. Careful management has made them a model of successful conservation policies and multiple-use of land. It has also enhanced public appreciation for the natural resources they contain. Throughout the national grasslands, innovative agricultural techniques—as well as sustained-yield management of oil, gas, timber, fish, wildlife, and forage for livestock—are being developed.

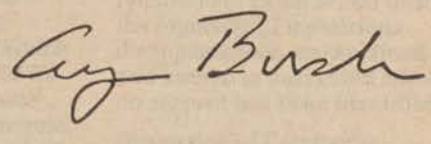
The national grasslands are home to a variety of plants, soils, minerals, and animals not found elsewhere. The lands are also a source of employment and economic stability for rural Americans, who benefit from the opportunities they provide in livestock grazing, energy development, tourism, and recreation.

Publicly owned and beneficial to all Americans, the national grasslands are a proud portion of our natural heritage. This week, let us renew our appreciation for them. Let us also remember our responsibility—as individuals and as a Nation—to cherish and protect the environment.

In recognition of the value of the national grasslands, the Congress, by Public Law 100–664, has designated the week of June 18 through June 24, 1989, as "National Grasslands Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 18 through June 24, 1989, as National Grasslands Week and call upon the people of the United States to observe this week with appropriate ceremonies and activities.

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



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Rules and Regulations

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

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 21

[Docket No. 89-5]

Reports of Crimes and Suspected Crimes

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is revising 12 CFR 21.11 regarding reports by a national bank in the event of known or suspected crimes. The final rule is intended to make report filing more efficient for banks and more useful for law enforcement agencies in identifying patterns of criminal activity and apprehending persons who commit crimes involving national banks.

This final rule finalizes revisions to the two criminal referral forms, raises the threshold for filing criminal referrals where no suspect has been identified, and clarifies the filing requirement as far as reporting financial crimes where no loss is incurred by the bank, such as money laundering, bank bribery, and Bank Secrecy Act violations. These revisions are intended to clarify the filing requirement for these reports and will tend to reduce the overall number of criminal referral reports to be filed by national banks.

EFFECTIVE DATE: July 20, 1989.

ADDRESS: Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Joel Miller, Attorney, Enforcement and Compliance Division, (202) 447-1818.

SUPPLEMENTARY INFORMATION:

Background

The OCC is charged with safeguarding the safety and soundness of national banks and pursuant to that authority is responsible for ensuring that national banks apprise other Federal law enforcement authorities of any actual or suspected violations of criminal statutes. Employee fraud, abusive insider transactions, check kiting schemes, money laundering and the like can be serious threats to a bank's security and may undermine the confidence and trust that individuals and businesses place in the banking industry. The OCC is primarily concerned with criminal transactions sufficient in size or number to impact the safety and soundness of the bank, patterns of criminal offenses, crimes committed by bank officials, and the adequacy of the bank's security systems and internal controls. The law enforcement community needs to receive reports, shortly after a crime or suspected crime has been discovered, which contain sufficient information to determine whether the matter warrants investigation and prosecution.

A working group was formed in December 1984 to address problems and promote cooperation toward the goal of improving the federal government's response to white collar crime in federally-regulated financial institutions. The working group is composed of senior officials of the federal financial institution regulatory agencies and the Justice Department. The working group monitors the criminal referral process and has recommended further improving and coordinating the criminal referral system now in use by all federally-insured financial institutions and the regulatory agencies.

On July 17, 1986, the OCC published a final rule in the **Federal Register** (50 FR 34857) pertaining to 12 CFR Part 21—Minimum Security Devices and Procedures and Reports of Crimes and Suspected Crimes. That final rule eliminated the former 12 CFR Part 7 reporting requirement and imposed a new Part 21 criminal referral reporting requirement upon all national banks. Based upon the OCC's experience over the past two years, certain needed revisions and clarifications were incorporated into an interim rule which became effective April 11, 1988. (53 FR 7881.) After reviewing the comments received in response to the interim rule, OCC has determined to formally adopt the interim rule as a final rule. The Discussion of Comments section below summarizes the comments received and provides additional interpretive analysis for national banks.

The goals of this final rule are to improve the information quality of criminal referrals, making the referrals more useful, to clarify the requirement for reporting financial crimes that result in no direct loss to the bank, and to raise certain of the thresholds for reporting requirements for national banks, making the reporting process more efficient and economical for the banks. These changes are designed to facilitate the assessment and investigation of possible criminal matters, aid in the identification of patterns of criminal misconduct, and improve the OCC's ability to track the disposition of criminal referrals.

Criminal Referral Forms (Short and Long)

Section 21.11 requires a bank to file a Criminal Referral Form to report known or suspected crimes to the OCC. The OCC Criminal Referral Form has two formats—a short form (CC-8010-08) and a long form (CC-8010-09). The "short form" requires a bank to report the basic facts of the known or suspected criminal transaction: the approximate date and dollar amount of the known or suspected criminal transaction, the type of crime (embezzlement, check kiting, money laundering etc.), a brief summary of the violation, and where known, the identity of any person suspected. The "long form," an expanded and more detailed report, is required only in those situations where the transaction or suspected violation exceeds $10,000, or for any transaction involving a bank insider (i.e., an executive officer, director, or principal shareholder) as defined at 12 CFR 215.2.

It is estimated that the short form will be used for 75% of the reports submitted. This estimated percentage on the use of short forms has declined from the 95% figure cited in the July 1986 final regulation, due to the OCC's decision to raise the threshold reporting requirement (from $2,500 to $5,000) for the reporting of mysterious disappearances, unexplained shortages, and known or suspected crimes where no suspect has been identified.

Discussion of Comments

The OCC received six comments on the interim rule: five from national

banks and one from a bank trade association. While the comments generally welcomed the changes made in the reporting requirements, (particularly OCC raising the threshold from $2500 to $5000 for the reporting of suspected crimes where a bank has no suspect), several areas of concern were raised by the commenters which are addressed and clarified below. The major focus of the commenters' concerns was:

(a) Clarifying the reporting requirements concerning known or suspected violations of the money laundering and bank secrecy statutes;

(b) Reducing the overall criminal referral reporting burden on national banks;

(c) Minimizing potential bank liability under the Right to Financial Privacy Act (RFPA); and

(d) Providing more information to national banks on the nature and scope of the underlying criminal violations upon which the banks are obligated to prepare criminal referrals.

Money Laundering/Bank Secrecy Referrals

Several commenters sought additional clarification concerning OCC's new requirement that national banks file criminal referrals in situations where, although no loss has been recognized by the bank, violations of the money laundering and/or Bank Secrecy statutes are known or suspected to have occurred, with the bank being used as a conduit for those currency transactions. Two commenters expressed concern that this new OCC filing requirement will duplicate the Currency Transaction Report ("CTR") filings already required by the Treasury Department, particularly in situations where money laundering is suspected.

Under this final regulation, banks are required to file criminal referrals only where there is a reasonable basis to believe a criminal violation has occurred. The fact that a customer engages in sizable cash transactions at a bank does not, in and of itself, provide a reasonable basis for concluding that a money laundering or currency structuring crime has been perpetrated. The bank must consider the size, frequency, and nature of these transactions and conclude, on a case by case basis, whether there is a reasonable basis to believe that a violation of the money laundering or Bank Secrecy statutes has occurred. CTRs must be filed based solely on a determination by the bank of the dollar volume of currency transactions conducted by a particular customer on each business day. Criminal referral forms, on the other hand, must be filed regardless of the dollar amount of the cash transactions, where the bank has a reasonable basis for suspecting a criminal transaction has occurred.

Financial institutions serve a critical role in the detection and reporting of money laundering crimes. Due to the inherent nature of money laundering and currency structuring, without input from banks, the law enforcement community would be severely hampered in investigating and prosecuting violators of the money laundering statutes. The objective of this regulation is not to "deputize" every teller in every national bank, nor is it to place the bank in a position of reporting every customer that looks "suspicious" or deals in large amounts of cash. Rather, the regulation is intended to focus the bank's attention on the reality that these crimes may be occurring at their institutions and to require criminal referrals where bank personnel have a reasonable basis for believing that a bank customer is engaged in activities that may violate the money laundering or Bank Secrecy statutes.

Where a bank has a reasonable basis for suspecting a customer is engaged in money laundering or currency structuring, the bank must file a criminal referral. While there is no requirement that the bank immediately cease engaging in business with that customer or that the bank close out that customer's accounts, the Bank should be aware of the potential civil and criminal liability it may face if it is linked to money laundering or structuring of currency transactions. A bank that suspects a customer of structuring or money laundering should ensure that it does not serve as a conduit for any additional suspected criminal transactions. Where a bank suspects or identifies a pattern of money laundering transactions, or otherwise considers immediate action to be appropriate, prudent action includes immediately contacting the IRS at 1–800–BSA–CTRS, or the Criminal Investigation Division of the bank's local IRS office, placing them on notice that this activity is occurring, and obtaining their input concerning how best to handle the situation.

National banks are not required to report every act that has some potential to be a crime. The regulation requires the bank to decide if there is a reasonable basis to believe a crime has been committed, and if so, determine whether that suspected criminal transaction meets one of the criteria requiring the filing of a referral.

Reducing the Filing Burden

Several commenters urged the OCC to further elevate its reporting threshold in order to further reduce the burden of preparing and filing criminal referrals on national banks. In this final rule, OCC has again modestly raised the threshold triggering its reporting requirements. OCC is concerned with the burden of these filings and expects the final rule to result in a net decline in a bank's reporting obligation.

The OCC could not raise the thresholds higher because the information currently collected is being utilized by the OCC, Department of Justice and the IRS. Particularly in light of the FBI's computerized retrieval system for tracking criminal activity, it is increasingly likely that individuals who perpetrate even relatively small dollar crimes at different financial institutions will be tracked and may be prosecuted. Of course, not every criminal referral will result in a prosecution. However, the more detailed the referral, the more useful the information will be for law enforcement purposes.

Right to Financial Privacy Act (RFPA) Concerns

Two commenters expressed RFPA concerns about the interim rule. One sought inclusion of the names of the various agencies that may receive the criminal referral forms in the regulation rather than just in the distribution lists on the criminal referral forms. The commenter also sought the inclusion of additional government agencies (especially U.S. Customs) in the regulation and on the distribution list. The second commenter requested that an explicit reference to the RFPA be included on the forms, particularly 12 U.S.C. 3403(c) which exempts financial institutions from RFPA liability if they notify Government authorities of possible violations of any statute or regulation.

The first commenter raises an important point. Namely, that the distribution list on the forms is not all inclusive. National banks are encouraged by both this final rule and section 1103(c) of the RFPA, 12 U.S.C. 3403(c), to notify all governmental authorities, federal, state and local, of possible criminal violations. Under the express language of 12 U.S.C. 3403(c):

> Nothing in this chapter shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or

regulation. Such information may include only the name or other identifying information concerning any individual or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.

The fact that the RFPA provides this "safe harbor" allows banks to turn over certain pertinent information to all relevant government agencies including U.S. Customs. OCC does not require distribution to every agency that may share an interest in obtaining information about suspected crimes at a bank (e.g. U.S. Customs, Small Business Administration, or the Department of Housing and Urban Development). Rather, OCC encourages banks, where appropriate, to voluntarily disseminate information to additional local, state and federal agencies. To mandate further distributions in some situations would be confusing and would impose an additional reporting burden on the banks.

Insofar as explicitly referencing RFPA on the forms is concerned, the OCC does not view that proposal as adding any legal weight to this mandatory reporting requirement. OCC considers the role of bank counsel and bank management to be one of providing guidelines to bank personnel concerning RFPA considerations and restrictions.

The most recent amendments to the RFPA, (which are incorporated in the Anti-Drug Abuse Act, Pub. L. No. 100–690), provide additional authority for financial institutions making criminal referrals. In particular, referrals pertaining to either crimes against financial institutions or Bank Secrecy Act violations that are committed by directors, officers, employees, or controlling shareholders of, or by major borrowers from, a financial institution, now explicitly fall within the "good faith defense" to the RFPA. Under the latest amendments to the RFPA, 12 U.S.C. 3413(1) and 3417(c), financial institutions disclosing financial records pertaining to insider abuse, in good faith, are now provided a defense against all actions brought against the institution under the RFPA, the constitution of any State, or any other State or local statute or regulation.

Additional Information on Potential Crimes

One commenter sought additional information on the forms concerning the nature and scope of the underlying criminal violations upon which banks are obligated to prepare criminal referrals. The criminal referral forms already provide summaries of those crimes banks are most likely to encounter. OCC believes those summaries offer enough of an outline for a bank employee to evaluate a suspected crime. OCC encourages bank employees to discuss suspected criminal activities with bank counsel, or representatives of the FBI, the IRS, U.S. Attorney's Office, or local law enforcement, as appropriate. OCC believes additional explanations of the infinite permutations of white collar criminal conduct are unnecessary. The more detailed the list of crimes, the more likely it is that a crime omitted from that list would be considered nonreportable.

Submission of Criminal Referral Forms Threshold Amounts

The final rule requires that a national bank submit a criminal referral form upon the discovery of any known or suspected criminal violation committed against the bank or involving a financial transaction involving bank personnel. A report must be filed where bank personnel are believed to be involved regardless of the dollar amount of bank funds involved.

The final rule also sets forth more general guidelines for the reporting of known or suspected criminal violations of the U.S. Code, or regulations promulgated thereunder, where a violation is committed against the bank or where a criminal transaction is undertaken using the bank to facilitate that transaction. The bank must report all criminal transactions involving $1,000 or more where it has a substantial basis for identifying a possible suspect or group of suspects.

For a criminal violation not involving bank personnel and involving a transaction of $1,000 or less, a bank must file a criminal referral only when that transaction appears to be part of a pattern of criminal activity committed by one or more identifiable individuals and the aggregate value of the transactions totals $1,000 or more. For example, a series of forged signatures appearing on credit card purchase receipts must be reported if the bank has reason to believe one identifiable individual, or a group of identifiable individuals acting in concert, has perpetrated the forgeries, and the aggregate dollar loss is $1,000 or more. For those situations (such as money laundering or false statements on credit applications) where the bank does not incur a "loss", the $1,000 test applies in that the bank must evaluate whether the transaction either involved, or had the potential to involve, $1,000 or more.

In those situations where there is no substantial basis for the bank to identify a possible suspect or group of suspects, a bank must report a known or suspected criminal violation only when it involves $5,000 or more. For example, where a bank is unable to identify a suspect as the perpetrator of a check fraud, the bank need not file a referral until the loss on any given account exceeds $5,000. In addition, the final rule provides that a bank must report mysterious disappearances or unexplained shortages of bank funds or other assets only when they amount to $5,000 or more.

Where a bank suspects it has been used as a conduit for a violation of the money laundering statutes there will, of course, be no loss. As discussed above, national banks are now required to report suspected violations of the money laundering and Bank Secrecy statutes where they have a reasonable basis for believing a violation has occurred regardless of the dollar amount of the transaction.

What Triggers the Reporting Requirement

In order to clarify what constitutes a reportable "known or suspected criminal violation," the OCC will continue to incorporate into its Criminal Referral Forms (CC–8010–08 and 8010–09) a listing and description of the most common federal crimes involving financial institutions, their personnel, or their customers, accounts. Using this list as a base, bank personnel should, in most instances, be able to determine whether a particular situation gives rise to the reporting requirement. Of note, the revised Criminal Referral Forms which were issued concurrently with the interim regulation in March 1988, include reference to three additional federal criminal statutes: (1) 18 U.S.C. 1956; (2) 18 U.S.C. 1957; and (3) 31 U.S.C. 5324. Banks are encouraged to file referrals whenever they suspect criminal transactions in violation of any of the cited statutes.

Suspected Violations

The reporting requirement imposes an obligation to report all "known or suspected criminal violations" that meet specified criteria. By "suspected violation" the OCC is referring to a

transaction or series of transactions for which there is a reasonable basis to believe that a criminal violation has occurred. The OCC cannot quantify the precise amount of evidence needed to trigger the reporting requirement any more than it can delineate all the relevant factors that a bank must consider in deciding whether or not to report a suspicious or otherwise irregular transaction.

In many instances the suspicious nature of the transaction is a function not only of the transaction itself and its context but also of the bank's experience with the individuals associated with the transaction, either as employees or customers of the bank. In many situations, the bank will be able to discern the "intent" of those involved in a suspicious transaction. Invariably, however, the pivotal question of criminal intent will be left for the determination of law enforcement authorities. In those situations, the bank should make a practical assessment of the suspicious transaction based upon a good faith examination of all the relevant factors. Clearly, the more serious the irregularity, particularly if it involves a bank insider, the greater the obligation upon the bank to fully explore the matter.

Revised Threshold Amounts For Filing Reports

OCC has no desire to place unnecessary reporting burdens on national banks; however, it is interested in furthering crime detection and prevention in cooperation with other law enforcement agencies. OCC has determined, based upon its experience with the criminal referrals made over the past year, that where a bank has no apparent basis for identifying a possible suspect or group of suspects involved with a known or suspected criminal violation, a minimum reporting amount of $5,000 is appropriate. The commenters to the interim regulation universally endorsed the increase in this reporting threshold.

OCC has further determined, based upon its experience with past referral forms, that where the bank has a reasonable basis for identifying a possible suspect or group of suspects, it is important that every crime of $1,000 or more be reported. In addition, crimes of less than $1,000 are to be reported where a bank has reason to believe that one or more identifiable individuals has committed a series of crimes which, when aggregated, total $1,000 or more.Where a bank employee, officer, director, or shareholder is suspected of criminal activity, all bank related crimes must be reported, regardless of the dollar amount involved.

Reporting Period

The final rule continues to impose a 30-calendar day reporting period, commencing from the date of detection, during which a bank must file a criminal referral. In those situations where the transaction requires immediate attention or where the violation is ongoing, OCC strongly encourages the bank to notify the appropriate law enforcement agencies and the appropriate OCC Office by telephone. The bank's oral notification should be followed by a timely written report.

In those situations where a bank is not obligated to file a report, (e.g. an unexplained shortage of less than $5,000), but facts subsequently come to light revealing information identifying the individual(s) known or suspected of having committed or attempting to commit a criminal act, the 30-calendar day reporting period commences from the date that reportable information, such as the identity of a suspect, first. comes to light.

Penalty for Failure to Report

The final rule states when a civil money penalty may be assessed by OCC against a bank, its officers or its directors for failure to file a report. Penalties may be assessed where a violation is willful or demonstrates a careless disregard for compliance. Assessments are likely to be made where it is established that a bank officer, director or other employee intentionally has attempted to cover up a defalcation, significant loss, pattern of criminal transactions, or has intentionally failed to file a criminal referral form.

If a question exists as to whether to report an incident, OCC recommends that a criminal referral be submitted providing at least the nature of the transaction, relevant account numbers and the identities of those suspected. For example, where a bank has a substantial basis to suspect that an individual has engaged in a pattern of criminal conduct, such as a series of transactions that appear to violate the money laundering statutes, the bank should file a criminal referral describing that pattern of criminal conduct. Additionally, banks are encouraged to report suspected violations, regardless of amount, to either state or local law enforcement authorities, whenever a violation of state or local law is suspected.

Exceptions to Reporting Requirements

The final rule in § 21.11(f) continues to provide two exceptions to the reporting requirements: one for robberies and burglaries and the other for lost or missing securities. These exceptions are provided because of the OCC's recordkeeping requirement in § 21.5(c) which requires a bank to keep a record of all crimes of violence on file, and because of the Securities and Exchange Commission's reporting requirements set forth at 17 CFR 240.17f–1 which requires the reporting of all lost and missing securities.

Regulatory Flexibility Act

Pursuant to section 605[b] of the Regulatory Flexibility Act [Pub. L. 96–354m, 5 U.S.C. 601], the Comptroller of the Currency has certified that this final rule will not have a significant economic impact on a substantial number of small banks or other small entities.

Executive Order 12291

The OCC has determined that this final rule is not a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. OMB Control No. 1557–0069 was assigned. The estimated average burden associated with the collections of information contained in this final rule is one-half hour per respondent. The burden per respondent may vary depending on individual circumstances and on whether the long or short form must be filed.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to: Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Treasury Desk Officer.

List of Subjects in 12 CFR Part 21

National banks, Criminal referrals, Insider abuse, Theft, Embezzlement, Check kiting, Defalcations, Money laundering, Criminal transactions.

Authority and Issuance

For the reasons set out in the preamble, Part 21 of Chapter I of Title 12

of the Code of Federal Regulations is amended as follows:

PART 21—[AMENDED]

1. The authority citation for Part 21 is revised to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1881–1884, and 3401–3422.

2. Section 21.11 is revised to read as follows:

§ 21.11 Reports of crimes and suspected crimes.

(a) *Purpose.* This section applies to known or suspected crimes involving national banks. This section ensures that the appropriate federal regulatory and law enforcement agencies are notified when unexplained losses or known or suspected criminal acts are discovered. Based on these reports, the OCC maintains a data base for monitoring certain individuals suspected of having committed crimes against banks.

(b) *Reports Required.* A national bank shall file OCC Criminal Referral Form (CC–8010–08 or CC–8010–09) in accordance with the instructions on the form, in case of:

(1) Any mysterious disappearance or unexplained shortage of bank funds or other assets of $5,000 or more.

(2) Any known or suspected criminal violation, or pattern of criminal violations, of any section of the United States Code, or any regulation promulgated thereunder, committed against the bank or involving a financial transaction conducted through the bank, where the bank has a substantial basis for identifying responsible bank personnel.

(3) Any known or suspected criminal violation, or pattern of criminal violations, of any section of the United States Code, or any regulation promulgated thereunder, committed against the bank or involving a financial transaction conducted through the bank and involving or aggregating $1,000 or more in bank funds or other assets, where the bank believes, in good faith, that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects.

(4) Any known or suspected criminal violation of any section of the United States Code, or any regulation promulgated thereunder, committed against the bank and involving or aggregating $5,000 or more in bank funds or other assets, where the bank believes, in good faith, that it is either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(c) *Time for Reporting.* (1) A national bank shall file, no later than 30 calendar days after the date of detection of the loss or known or suspected criminal violation, any report required pursuant to paragraph (b) of this section. Where a report becomes necessary because a possible suspect or group of suspects is finally identified, the 30-calendar day reporting period commences with the identification of the suspect or group of suspects.

(2) Where a pattern of crimes committed by an identifiable individual is detected by a bank, a report shall be filed no later than 30 calendar days after the aggregate amount of the crimes exceeds $1,000.

(3) In situations involving violations requiring immediate attention or where a reportable violation is ongoing, the bank should immediately notify, by telephone, the offices set forth on the forms. Banks shall timely file, after telephone notification, the required written reports.

(d) *Reporting to Federal, State and Local Authorities.* Banks are strongly encouraged to file Criminal Referral Forms or to otherwise report crimes or suspected criminal activity to federal, state and local law enforcement authorities in those situations where the facts provide a reasonable basis for concluding that a violation of law has occurred.

(e) *Manner of Reporting.* A bank may elect to file its reports on the appropriate OCC Criminal Referral Form, a legible photocopy thereof, or on a facsimile of the appropriate OCC form.

(f) *Exemptions.* (1) Banks need not file Criminal Referral Forms for those robberies and burglaries explicitly covered by the recordkeeping requirements of § 21.5(b), committed or attempted at a banking office of a bank.

(2) Banks need not file Criminal Referral Forms for lost, missing, counterfeit or stolen securities if a report is filed pursuant to the reporting requirements of 17 CFR 240.17f–1.

(g) *Notification of Board of Directors.* The Bank shall have effective procedures ensuring that the board of directors of the bank is notified, not later than at their next meeting, of the filing of any report hereunder.

(h) *Penalty.* Willful failure to file or careless disregard in filing reports may subject the bank, its officers, and/or its directors to civil money penalties.

(i) As used in this section, the term "suspected" refers to all matters, including unexplained losses, for which there is a known factual basis for concluding that a crime has been or may have been committed.

(Approved by the Office of Management and Budget under Control Number 1557–0069.)

Date: June 13, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89–14512 Filed 6–19–89; 8:45 am]

BILLING CODE 4810–33–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C–3100]

Canada Cement Lafarge Ltd. et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies Paragraph VIII of the Commission's consent order (48 FR 1486) by deleting the requirement for prior approval of acquisitions in the state of Florida. The modifying order is the result of the Commission granting in part and denying in part the respondents' requests for modifications of the terms of the original order.

DATES: Consent Order issued December 21, 1982. Modifying Order issued April 4, 1989.

FOR FURTHER INFORMATION CONTACT: Jane Seymour, FTC/S–2115, Washington, DC 20580. (202) 326–2687.

SUPPLEMENTARY INFORMATION: In the Matter of Canada Cement Lafarge Ltd., et al. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, as set forth at 48 FR 1486, are deleted in part.

List of Subjects in 16 CFR Part 13

Cement, Trade practices.

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

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

Order Granting in Part and Denying in Part Request To Reopen and Modify Order Issued December 21, 1982

On December 5, 1988, Lafarge Corporation ("Lafarge") filed a

Supplemental Petition To Reopen and Modify Consent Order ("Supplemental Petition") and asked that its original Petition to Reopen and Modify Consent Order ("Petition") filed August 11, 1988, be deemed refiled. Under the order, Lafarge is the successor to Canada Cement Lafarge Ltd. ("CCL"). Pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice, the Supplemental Petition asks the Commission to reopen and modify the order in Docket No. C–3100. Lafarge requests that the order be modified by setting aside Paragraph VIII to relieve it of the need to obtain prior Commission approval for acquisitions of cement assets. The Petition and the Supplemental Petition were placed on the public record for thirty days, pursuant to § 2.51 of the Commission's Rules. No comments were received.

The complaint in this case was issued under section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and alleged anticompetitive effects arising from the acquisition by CCL of General Portland Inc. ("GPI") in October 1981. 100 F.T.C. 583 (1982). According to the complaint, the relevant geographic markets were the Inland Market and the Florida Market. The "Inland Market" was defined as northern and eastern Alabama, Georgia, southeastern Tennessee and northern Florida. The "Florida Market" was defined as the peninsular region of the State of Florida. 100 F.T.C. at 584. Paragraph VIII of the order, which was issued by the Commission on December 21, 1982, prohibits respondents for a ten year period ending on January 10, 1993, from acquiring without the prior approval of the Commission, any cement manufacturing or grinding plant or distribution terminal in South Carolina, Georgia, Alabama, Tennessee, and Florida or in any Plant Areas in which respondents, at the time of the acquisition, are then engaged in the manufacture of cement. 100 F.T.C. at 570. The order defines "Plant Area" as each area in the United States within a 300 miles radius of any cement plant owned or leased by respondents in either the United States or Canada.

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside in whole or in part." A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order to make continued application of the order inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986), at 4.

If the Commission determines that the petitioner has made the required showing of changed conditions, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one given the public interest in the repose and finality of Commission orders. *See Federated Department Stores v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

The Commission may also modify an order pursuant to section 5(b) when, although changed circumstances would not require reopening, the Commission determines that the public interest warrants such action. Section 2.51 of the Commission's Rules invites respondents in petitions to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51. In the case of a request for modification based on this latter ground, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C–2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2. If the showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. *Id.* The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm.

Whether the request to reopen is based on changed conditions or on public interest considerations, the burden is on the respondent to make the requisite satisfactory showing. The language of section 5(b) plainly anticipates that the petitioner must make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission may properly decline to reopen an order if a request is "merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96–500, 96th Cong., 1st Sess. 9–10 (1979).

The Commission has determined that reopening the order and modifying Paragraph VIII by deleting the State of Florida from the geographic coverage of the prior approval provision are warranted by changed conditions of fact. Lafarge has demonstrated changes in the Florida Market, resulting from technological and other developments, that have led to significantly increased cement imports. These changes, which have occurred in the northern part of Florida as well, remove any significant concerns that any Lafarge acquisition in Florida might raise antitrust concerns and so should be subject to prior approval. Developments in unloading technology have lowered water transportation costs, and reduced world-wide demand has caused foreign producers to ship more cement into Florida. As a result, Florida is likely a part of a broader geographic market including western Europe and Latin America. It is unlikely that any acquisition in that broader geographic market would warrant antitrust scrutiny.

After carefully considering the remainder of Lafarge's request for relief from the prior approval requirement, the Commission has concluded that Lafarge has not made a satisfactory showing that changed conditions of fact or the public interest require Paragraph VIII to be further modified. After reviewing Lafarge's Petition and Supplemental Petition, as well as the affidavits and economic analyses supplied therewith, it does not appear that Lafarge has shown that changed conditions eliminate the need for the prior approval requirement or that any injury from the prior approval requirement outweighs the need for the order.

Lafarge has not shown that the same changes that have eliminated the need to review acquisitions in Florida have affected the Inland Market or other regional markets to the same extent. Indeed, whatever changes in imports that have occurred in those areas do not appear to have been significant. Lafarge concedes that the factual changes allleged in the Inland Market and in Plant Areas were possibly foreseeable and have been less extreme than in Florida, and Lafarge recognizes that its evidence of changed conditions in those markets may not be sufficient to meet its burden of proving changed factual circumstances. Petition at 7, 16. Lafarge

has also not shown changes of fact that demonstrate that the Inland Market is not a relevant geographic market.[1] The Commission has therefore concluded that Lafarge has not shown changed conditions that eliminate the need for a prior approval provision in these areas.

Lafarge also asserts in its Petition that the changes related to the Inland Market and to the markets where the Plant Areas are located, though possibly foreseeable, have so altered the public interest balance that the prior approval requirement should be removed under the public interest standard. Lafarge contends that "the public interest is harmed by continuation of the prior approval requirement because Lafarge is unable to compete in the market for cement-producing and distributing assets, even if no significant antitrust risk is created by the potential acquisition." Petition at 19. The Petition and the Economic Report submitted with the Petition [2] identified three instances in which the prior approval requirement allegedly prevented or inhibited Lafarge's ability to acquire certain cement assets.[3] Those, however, are instances in which it was clearly foreseeable that the order's prior approval provision would apply. It was also foreseeable at the time the respondents agreed to the order that the prior approval requirement would impose costs upon such acquisitions by Lafarge, and it was equally foreseeable that Lafarge's competitors would not be subject to similar requirements. The costs identified by Lafarge do not ordinarily provide a sufficient basis to justify termination of a prior approval provision in an order. *See* Order Reopening and Setting Aside Order Issued on April 21, 1981, *Albertson's, Inc.*, Docket No. C-3064, July 1, 1987, at 4. Unlike the showing in *Albertson's*, Lafarge has failed to show that no acquisition or series of acquisitions that it might make over the next four years would raise competitive concerns. The Commission has therefore determined that Lafarge has failed to make the threshold showing of injury under the public interest standard.

Additionally, even if Lafarge had met its threshold burden of showing a need for relief from the prior approval provision for acquisitions in the Inland Market and in Plant Areas, Lafarge has not established that the reasons for making the modification outweigh the continuing need for the order's prior approval requirements. In the Petition and the Economic Report, Lafarge alleges that while changes in the Inland Market may not be sufficient to establish changed conditions of fact necessitating reopening the order, the facts do establish that under current merger analysis, the Inland Market, as defined in the complaint, never existed or no longer is a relevant market. Petition at 16, Economic Report at 29. Lafarge claims that since the Inland Market, as redefined by Lafarge, is no longer concentrated, the public interest requires elimination of the prior approval requirement for acquisitions in that area. After reviewing Lafarge's Supplemental Petition and supporting documents, the Commission has concluded that Lafarge has failed to show that there is no continuing need for the order in the Inland Market defined in the complaint. In addition, absent extraordinary circumstances, the Commission will not reconsider whether the markets alleged in the complaint are valid. Lafarge chose not to contest the complaint. Absent a showing of changed conditions or a threshold showing of injury, the Commission will not revisit issues that could have been, but were not contested.

Lafarge's claims relating to the lack of a continuing need for prior approval of acquisitions within 300 miles of Lafarge's currently existing cement plants are mainly based on the same factual allegations as its arguments relating to the Inland Market. It claims that, due to changes in transportation regulations and technology, it is now economically feasible to ship cement longer distances than at the time of the order and that as a result, cement markets are geographically broader and less concentrated. It also claims that the changes in the technology of shipping cement by water have opened the U.S. markets to imports, obviating the need to be concerned about possible anticompetitive activity by domestic producers.

Lafarge has failed to demonstrate that there are no geographic markets within the United States in which any possible acquisition by Lafarge would warrant the Commission's scrutiny. As noted previously, Lafarge's cement market studies may not accurately depict the appropriate geographic market in which to review acquisitions in Plant Areas, and thus fail to demonstrate that no acquisition in any Plant Areas would warrant scrutiny by the Commission.[4] Lafarge's proposed acquisition of the Huron Division from National Gypsum is an example of a recent transaction subject to the order that raised significant antitrust issues and required extensive scrutiny before the Commission granted approval.[5]

The Petition requests that if the prior approval provision is not set aside, the Commission substitute a prior notification requirement for the prior approval requirement for acquisitions made in Plant Areas. Because the Commission has determined that Lafarge has failed to show that there is no longer a continuing need for prior approval of acquisitions by Lafarge in Plant Areas and because prior notification would not be an adequate substitute for the Commission's review under a prior approval provision, this request is also denied.

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[1] Lafarge's analysis of the Inland Market in its cement market studies may not accurately depict the appropriate geographic market because its assessment of the supply response of firms on the fringe of the postulated markets may be overstated. Moreover, the deregulation of railroad rates, which is a basis for Lafarge's analysis of geographic markets, occurred prior to the date of the issuance of this order and therefore is not a changed condition.

[2] Michael W. Klass, "Economic Analysis of the Proposed Relaxation of the Prior Approval Provision of the Consent Order Governing Lafarge Corporation's Acquisition of United States Cement Assets," August 11, 1988 ("Economic Report").

[3] The first instance involved GPI's attempt to acquire a cement terminal in West Palm Beach, Florida, from Ideal Basics Industries in November 1982, while the consent order in this matter was pending. According to Lafarge, Ideal backed out of the transaction because of the need for GPI to obtain prior Commission approval of the sale—"a time consuming process." Petition at 13–14. Subsequently, in 1984, Lafarge desired to lease a West Palm Beach terminal, but instead entered into an allegedly more costly through-put arrangement because it was uncertain if the lease of the terminal was subject to the prior approval requirement. In neither instance did Lafarge seek prior approval from the Commission.

The second instance involved a cement plant in Seattle, which was sold at auction. Lafarge claims that the prior approval requirement prevented it from bidding on those assets. Petition at 19–20. The third situation cited by Lafarge involved its acquisition of the Huron Division of National Gypsum Company. Lafarge alleges that the costs of the acquisition were raised by the legal and economic expert fees it incurred to seek prior approval and by the 11 month wait for the Commission's prior approval process to be concluded. Petition at 20–21. The Commission notes, however, that Lafarge did make that acquisition, and notes further that Lafarge's delay in responding to the staff's requests for information contributed to the time needed to decide Lafarge's request.

[4] Because neither the complaint nor the order define the geographic market for acquisitions in Plant Areas, the Commission will determine the appropriate market analysis at the time any request for prior approval is made.

[5] Even Lafarge's demonstration that water-based terminals can be constructed in Florida within a two-year time frame does not demonstrate that such terminals could be constructed anywhere on the United States coastline. The permitting process varies from jurisdiction to jurisdiction, and Lafarge has not shown that a terminal could be built within two years in other Plant Areas. Therefore, Lafarge has not shown that acquisitions in Plant Areas that include deep water ports should be removed from order coverage.

The Commission, therefore, has determined to grant Lafarge's request to reopen and modify Paragraph VIII of the order to delete the requirement for prior approval of acquisitions in the State of Florida. Further, the Commission has determined to deny Lafarge's request in all other respects.

Accordingly, it is ordered that this matter be reopened and that Paragraph VIII of the Commission's order in Docket No. C–3100 be modified, as of the date of service of this order, to read as follows:

VIII

It is further ordered, That for a period of ten years Respondents shall not acquire, without the prior approval of the Commission, any cement manufacturing or grinding plant or distribution terminal in South Carolina, Georgia, Alabama and Tennessee or in any Plant Areas (other than in Florida) in which Respondents, at the time of the acquisition, are then engaged in the manufacture of cement.

By the Commission.

Donald S. Clark,

Secretary.

Separate Statement of Chairman Oliver in the Matter of Canada Cement Lafarge, Ltd.

I concur in Commission's decision to grant Lafarge's request to reopen and modify Paragraph VIII of the order, by deleting the requirement for prior approval of acquisitions in the State of Florida, and to deny Lafarge's request in all other respects. However, in reaching this conclusion, I do not join in imposing the standard espoused in *Damon Corp.*, Docket No. C–2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2, that petitioner demonstrate some "affirmative need" for modification when invoking the public interest. The "affirmative need" standard is required neither by section 5(b) of the Federal Trade Commission Act nor by Rule 2.51 of the Commission's Rules of Practice, and the Commission should not impose this additional hurdle. The "affirmative need" standard creates no discernible benefits. Nevertheless, in my view, the public interest is served by continuing to impose the prior approval requirement for acquisitions in the Inland Market and Plant Areas outside of Florida.

[FR Doc. 89–14568 Filed 6–19–89; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 113

[Docket No. C–3252]

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

AGENCY. Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a West Hartford, CT, corporation from claiming that any computer-related product is or will be available for sale, or has or will have any capability, unless the product actually is available or has that capability, or the company has a reasonable basis for saying it will be available or will have that capability.

DATE: Complaint and Order issued May 18, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Don M. Blumenthal, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., Suite 520–A, Cleveland, Ohio 44114. (216) 522–4210.

SUPPLEMENTARY INFORMATION: On Wednesday, January 18, 1989, there was published in the **Federal Register**, 54 FR 1948, a proposed consent agreement with analysis In the Matter of Coleco Industries, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form or order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.10–1 Availability of merchandise and/or services; § 13.175 Quality of product or service. Subpart—Corrective Actions And/Or Requirements: Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(a) Advertising substantiation; § 13.533–50 Maintain means of communication. Subpart—Misrepresenting Oneself And Goods:—Goods: § 13.1572 Availability of advertised merchandise and/or facilities; § 13.1590–20 Federal Trade Commission Act; § 13.1710 Qualities or properties.

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

List of Subjects in 16 CFR Part 13

Computer games, Modules, Toys, Trade practices.

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

Donald S. Clark,

Secretary.

[FR Doc. 89–14567 Filed 6–19–89; 8:45 am]

BILLING CODE 6750–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 344

RIN 3220–AA78

Contributions Under Special Transition Rule for Public Commuter Railroads

AGENCY: Railroad Retirement Board.

ACTION: Temporary rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends Chapter II of Title 20 of the Code of Federal Regulations by adding a new Part 344. Part 344 sets forth Board procedures for collecting contributions under the Railroad Unemployment Insurance Act from public commuter railroads under the special transition rule that was added to that Act by section 7102(a) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Title VII, Subtitle A of Pub. L. 100–647). The special transition rule will be applicable to calendar years 1989 and 1990 and will then cease to be effective.

EFFECTIVE DATE: This part will become effective June 20, 1989. However, the Board will consider comments received by July 20, 1989.

ADDRESS: Office of Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, Chicago, Illinois 60611; (312) 751–4513 (FTS 386–4513).

SUPPLEMENTARY INFORMATION: Each railroad employer currently pays unemployment insurance contributions equal to 8 percent with respect to each employee's compensation that is not in excess of the monthly compensation base under section 1(i) of the Railroad Unemployment Insurance Act. Such contributions are collected by the Railroad Retirement Board in accordance with Part 345 of this chapter. A portion of the amount collected from each employer is used to pay the Board's expenses in administering the Railroad Unemployment Insurance Act.

In addition, each railroad employer pays a tax under the Railroad Unemployment Repayment Tax Act (RURT) (26 U.S.C. 3321–3323).

Under the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (1988 Act), the current uniform contribution rate now applicable to all railroad employers will be phased out and replaced by a system under which each railroad employer will have an experience-rated contribution rate with respect to compensation paid in calendar years after 1990. The purpose of the experience rating provisions of section 8 of the Railroad Unemployment Insurance Act, as amended, is to hold base year employers more directly liable for benefit costs in the ensuring benefit year. However, section 7102(a) of the 1988 Act provides a special transition rule for public commuter railroads. Under this rule, such railroads are excused from paying the 8 percent contribution rate applicable to other railroad employers for 1989 and 1990, but instead are required to pay contributions equal to the entire cost of unemployment and sickness benefits attributable to such railroads, plus an additional amount for administrative expenses. Pulbic commuter railroads will continue to pay the RURT tax in the same manner as other railroad employers. After 1990, public commuter railroads will pay experience-rated unemployment insurance contributions on the same basis as other railroad employers.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collection imposed by this part has been approved by the Office of Management and Budget under control number 3220–0012.

List of Subjects in 20 CFR Part 344

Railroad employers, Railroad unemployment benefits, Railroad employees.

1. For the reasons set out in the preamble, Title 20, Chapter II of the Code of Federal Regulations, is amended by adding Part 344 to read as follows:

PART 344—CONTRIBUTIONS UNDER SPECIAL TRANSITION RULE FOR PUBLIC COMMUTER RAILROADS

Sec.

344.1 Purpose.
344.2 Employers subject to this part.
344.3 Attributable benefits.
344.4 Quarterly computation of contributions; Notice to public commuter railroad.
344.5 Filing of contribution report and payment of contributions.
344.6 Sunset provision.

Authority: 45 U.S.C. 362(i) and 362(l).

§ 344.1 Purpose.

This part implements section 8(a)(1)(B)(vi) of the Railroad Unemployment Insurance Act, as added by section 7102(a) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Title VII, Subtitle A of Pub. L. 100–647). Section 7102(a) amended section 8 of the Railroad Unemployment Insurance Act (45 U.S.C. 358) to provide that the unemployment insurance contributions required to be paid by public commuter railroads for 1989 and 1990 shall be computed under a special transition rule. Under the special transition rule, the contributions to be paid to the Railroad Retirement Board for 1989 and 1990 shall be equal to the amount of unemployment and sickness benefits paid by the Board to employees of public commuter railroad employers during those two years, if such benefits are attributable to such employers. Benefit payments will be attributable to a public commuter railroad under the circumstances described in § 344.3 of this part. The special transition rule also requires public commuter railroads to pay the Board an additional amount to cover the Board's administrative expenses. Accordingly, this part describes the Board's procedures for assessing and collecting contributions and administrative expenses under the special transition rule.

§ 344.2 Employers subject to this part.

(a) This part applies to public commuter railroads that provide commuter passenger service by rail and that employ individuals to carry out such service. A railroad is a public commuter railroad if on November 10, 1988, it was and continues to be publicly funded and publicly operated. The term "commuter service" means short-haul rail passenger service operated in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, and is usually characterized by reduced fare, multiple-ride, and commutation tickets, and by morning and evening peak periods of operations and ridership. The term "public commuter railroad" does not include any privately-owned railroad, or any portion of such railroad's operations, that provides commuter service pursuant to a contract with a commuter authority.

(b) Public commuter railroads subject to this part are the Long Island Railroad Company, the New Jersey Transit Corporation, the Metro-North Commuter Railroad Company, the Southeastern Pennsylvania Transportation Authority, the Port Authority Trans-Hudson Corporation, the Northeast Illinois Regional Commuter Railroad Corporation, and the Staten Island Rapid Transit Operating Authority.

(c) Any railroad employer not named in paragraph (b) of this section that believes it is subject to this part should request the Deputy General Counsel of the Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611 to make a determination as to whether it is an employer covered under this part. Such a request shall be treated as a request for a determination under § 259.1 of this chapter.

§ 344.3 Attributable benefits.

(a) *General rule.* Benefits paid during 1989 and 1990 to an employee of a public commuter railroad, after adjustment in accordance with § 344.4(c) of this part, will be attributed, in whole or in part, to the public commuter railroad or railroads that employed such employee during the base year applicable to the benefit year with respect to which the benefit payments were made. The term "base year" means the completed calendar year immediately preceding the beginning of the benefit year. The term "benefit year" means the 12-month period beginning July 1 of any year and ending June 30 of the next year, except that a registration period beginning in June and ending in July shall be deemed to be in the benefit year ending in such month of June. If an employee's only base year employer was a public commuter railroad, all of the benefits paid to such employee during 1989 or 1990 will be attributed to such base year public commuter railroad. If an employee had more than one base year public commuter railroad employer, benefit payments will be attributed in accordance with paragraph (b) of this section.

(b) *Multiple base year public commuter railroad employers.* All benefits paid to an employee who had more than one base year public commuter railroad employer shall be attributed to such base year employers as follows:

(1) *Employer at time of claim was last base year employer.* Benefits are first attributed to this employer up to the amount of compensation paid by this employer in the base year. Any benefits not attributed to this employer are then attributed to the employee's previous employer(s) in the base year in reverse order of employment with those

employers. However, if the benefits attributable under this provision exceed the employee's total base year compensation, the amount of the attributable benefits in excess of the total base year compensation shall be attributed to each base year employer in the same ratio as the compensation paid to such employee by the employer bears to the total of such compensation paid to such employee by all such employers in the base year.

Example. An employee was successively employed by two public commuter railroads in the base year, during which the employee received a total of $5,000 in compensation, $2,000 from the first employer and $3,000 from the second. Subsequently, the employee was furloughed by employer 2 and then claimed unemployment benefits. During the benefit year covered by the claim, the employee received $6,500 in unemployment benefits. The first $3,000 in benefits paid are attributed to employer 2. The next $2,000 in benefits are attributed to employer 1. The remaining $1,500 is attributed as follows:
Employer 1:

$$\frac{\$1500 \times \$2000}{\$5000} = \$600$$

Employer 2:

$$\frac{\$1500 \times \$3000}{\$5000} = \$900$$

(2) *Employer at time of claim not last base year employer.* Benefits are attributed to each base year employer in the same ratio as the compensation paid to such employee by the employer bears to the total of such compensation paid to such employee by all such employers in the base year.

Example: If, in the example above, after the base year the employee was employed by a third employer and then was furloughed, benefits are attributed to the two base year employers as follows:
Employer 1:

$$\$6500 \times \frac{(\$2000)}{(\$5000)} = \$2600$$

Employer 2:

$$(\$6500) \times \frac{\$3000}{(\$5000)} = (\$3900)$$

(c) *Other base year employer.* If a public commuter railroad employee's base year compensation includes compensation paid by a railroad employer other than a public commuter railroad, as well as compensation paid by public commuter railroad(s), the benefits paid to such employee to be attributed to the public commuter railroad will be determined in the same manner as under paragraphs (b)(1) and (b)(2) of this section treating for purposes of such determination the non-public commuter railroad employer(s) as if it were a public commuter railroad employer(s).

(d) *Amount to be attributed.* The amount of benefits to be attributed under this part is the gross amount of benefits payable to an employee with respect to a registration period, as computed prior to the deduction of:

(1) Any tax imposed under the Internal Revenue Code of 1986,

(2) The amount of any attachment under Part 350 of this chapter, or

(3) The amount recovered by application of § 340.6 of this chapter (Recovery by setoff).

§ 344.4 Quarterly computation of contributions; Notice to public commuter railroad.

(a) *Amount of contribution.* The amount of the contribution due under this part from a public commuter railroad shall consist of:

(1) The amount of benefits attributable to such railroad pursuant to § 344.3 of this part, as adjusted pursuant to paragraph (c) of this section, plus

(2) An additional amount to cover the Board's administrative expenses, as computed under paragraph (d) of this section.

(b) *Quarterly computation and billing of attributable benefits.* With respect to each calendar quarter beginning January 1, 1989, the Director of Unemployment and Sickness Insurance shall compute the gross amount of all benefits attributable to each public commuter railroad in accordance with § 344.3 of this part. The Director shall make such computation within 15 calendar days of the close of each quarter and shall issue a notice to each such railroad in accordance with paragraph (e) of this section.

(c) *Adjustments.* The amount of benefits attributed and billed to each public commuter railroad on a quarterly basis shall be reduced to reflect the amounts of any benefits recovered during such quarter if such benefits were attributed to such railroad in an earlier calendar quarter. If the Board recovers attributable benefits after December 31, 1990, and is unable to reflect the recovery on the billing for the last quarter of 1990, the Board will treat the recovery as a subtraction from the railroad's cumulative benefit balance under section 8(a)(7) of the Railroad Unemployment Insurance Act.

(d) *Administrative expenses.* In addition to the amount computed under paragraph (b) of this section, each public commuter railroad shall be liable to the Board for payment of a contribution for administrative expenses. Such contribution shall be equal to 0.65 percent of the total compensation paid by such railroad on which the railroad's contribution would be based under section 8(a)(1)(B)(i) of the Railroad Unemployment Insurance Act, if the railroad's contribution were determined under that provision.

(e) *Notice.* Notice to each public commuter railroad of the amount of benefits attributed with respect to a particular calendar quarter shall be by Form DC–1/PCRR reflecting the net amount of attributable benefits for which the public commuter railroad is to pay a contribution under this part.

§ 344.5 Filing of contribution report and payment of contributions.

(a) *Requirement.* Each public commuter railroad that is subject to this part shall pay contributions to the Railroad Retirement Board in the amount computed in accordance with § 344.4 of this part.

(b) *Payment.* Payment of the amount due shall be made in accordance with § 345.10 of this chapter.

(c) *Payment and Form DC–1/PCRR due date.* Each public commuter railroad paying contributions under this part shall both remit payment of the amount due and file Form DC–1/PCRR within 30 days of the date on which the Director of Unemployment and Sickness Insurance notifies each such railroad of the amount of benefits attributed to it.

(d) *Remedies.* All provisions of section 8 of the Railroad Unemployment Insurance Act and Part 345 of this chapter that are not inconsistent with this part shall apply with respect to the contributions required by this part.

§ 344.6 Sunset provision.

This part shall be effective with respect to contributions to be paid for calendar years 1989 and 1990 and shall cease to be effective with respect to contributions payable for periods after December 31, 1990.

Dated: June 12, 1989.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-14549 Filed 6-19-89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 436

[Docket No. 89N-0052]

Antibiotic Drugs; Vancomycin Hydrochloride for Injection; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of vancomycin hydrochloride, vancomycin hydrochloride for injection (54 FR 20382; May 11, 1989). The text of the amendment inadvertently used the word "months" after the number "6" in the sentence "Resolution compound 2 is eluted between 3 and 6 months after the start of the period when the percentage of mobile phase B is increasing from 0 percent to 100 percent." This document corrects the word "months" to read "minutes".

EFFECTIVE DATE: The effective date for the amendment to 21 CFR Part 436 continues to be June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

§ 436.366 [Corrected]

In FR Doc. 89-11244, appearing at page 20382 in the **Federal Register** of Thursday, May 11, 1989, the following correction should be made to § 436.366(g)(3): On page 20384, second column, paragraph "(3)", line 5, the word "months" is corrected to read "minutes".

Dated: June 13, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-14559 Filed 6-19-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-10]

Special Local Regulations; Fourth of July Fireworks Display; Parker Island, Little Egg Harbor, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Permanent special local regulations are adopted for the annual Fourth of July fireworks display launched from Parker Island, Little Egg Harbor, New Jersey. These regulations restrict vessel navigation in the regulated area during the event. Notice of the precise date and times these regulations are effective will be published in the Local Notice to Mariners and by **Federal Register** Notice. These special local regulations are considered necessary to control vessel traffic and to provide for safety of life and property on the navigable waters within the immediate vicinity of this event.

EFFECTIVE DATE: June 20, 1989. Compliance with these regulations will be required on different dates and times. The Fifth Coast Guard District Commander will publish notices in the Local Notice to Mariners and **Federal Register** announcing the date and times when these regulations are in effect.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking concerning these regulations in the **Federal Register** on March 30, 1989 (54 FR 13079). Interested persons were requested to submit comments. No comments were received, however an error was discovered in § 100.514(b)(2)(ii). The requirement stated in this paragraph should have been limited to persons on board vessels displaying the Coast Guard ensign, as in § 100.514(b)(2)(i). Several editorial changes also have been made in paragraph 100.514(c).

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments and Final Rule

No comments were received in response to the notice of proposed rulemaking. The area covered by this proposal is the same as that covered by the special local regulations issued for the Fourth of July Celebration held on July 4, 1988. The Fourth of July Celebration is an annual event expected to draw from 300 to 1,000 spectator craft. The waters enclosed by a circle drawn around the island's center with a radius of 1,000 feet will be closed to waterborne traffic during the fireworks display. Vessels transiting the area will not be inconvenienced since the deep-water channel will remain open.

Because of the nature of these regulations, and the fact that the regulations need to be in place for the upcoming July 4, 1989 celebration, the Coast Guard has determined that good cause exists to make this rulemaking effective in less than 30 days following publication in the **Federal Register**.

Economic Assessment and Certification

These regulations are not considered to be major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water)

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.514 is added to read as follows:

§ 100.514. Fourth of July Fireworks Display; Parker Island, Little Egg Harbor, New Jersey.

(a) *Definitions*—(1) *Regulated Area.* The waters of Little Egg Harbor bounded by the arc of a circle with a radius of 1,000 feet and with its center located at latitude 39°34'18.0" North, longitude 74°14'43.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Group Cape May, New Jersey.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(c) *Effective Period.* The Commander, Fifth Coast Guard District will publish a Notice in the **Federal Register** and in the Fifth Coast Guard District Local Notice to Mariners announcing the date and times that this section is in effect.

Dated: June 2, 1989.

A. D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-14489 Filed 6-19-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[1OGD 05-89-45]

Special Local Regulations for Marine Events; Fourth of July Fireworks Display; Parker Island, Little Egg Harbor, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.514.

SUMMARY: This notice implements 33 CFR 100.514 for the Fourth of July Fireworks Display; Parker Island, Little Egg Harbor, New Jersey. The regulations in 33 CFR 100.514 are needed to control vessel traffic within the immediate vicinity of this event. The regulations restrict vessel traffic in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.514 become effective on July 4, 1989, at 8:00 p.m. and terminate on July 4, 1989 at 11:30 p.m. In case of postponement due to inclement weather this regulation will take effect on July 5, 1989 at 8:00 p.m. and terminate on July 5, 1989 at 11:30 p.m.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

Drafting Information:

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Red, White and Blue Committee, Ltd., Beach Haven, New Jersey is sponsoring this celebration, which will consist of a fireworks display launched from Parker Island, Little Egg Harbor, New Jersey. The waters of Little Egg Harbor enclosed by a circle around the island's center with a radius of 1000 feet will be closed to waterborne traffic during the event. Vessels transiting the area will not be inconvenienced since the deep water channel will remain open.

Date: June 2, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-14490 Filed 6-19-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS-400022A; FRL-3604-3]

Sodium Sulfate; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deleting sodium sulfate solution (NA_2SO_4) from the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act. By promulgating this rule, EPA is relieving facilities of their obligation to report releases of Na_2SO_4 that occurred during the 1988 calendar year, and releases that will occur in the future. This relief applies only to reporting requirements under section 313 of Title III of SARA.

DATES: This rule is effective June 20, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Israel, Petition Coordinator, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, 401 M St., SW., Mail Stop OS-120, Washington, DC 20460, Toll free: 800-535-0202, in Washington, DC and Alaska, (202) 479-2449.

SUPPLEMENTARY INFORMATION:

I. Description of Petition and Regulatory History

EPA received a section 313(e) petition to delete Na_2SO_4, CAS No. 7757-82-6, from the list of toxic chemicals in 40 CFR 372.65. The petition from Hoescht Celanese Corporation was received on August 9, 1988.

After reviewing the petition and additional related information, EPA concluded that Na_2SO_4 did not meet the listing criteria related to acute human health effects, chronic health effects, or environmental toxicity. These criteria for listing chemicals are in section 313(d) of Title III of SARA. It is EPA's determination that available data do not demonstrate that Na_2SO_4 causes or can reasonably be anticipated to cause significant adverse health or environmental effects. Therefore, EPA issued a proposed rule in the **Federal Register** of February 17, 1989 (54 FR 7218), granting the petition and announcing EPA's proposal to delete Na_2SO_4 from the section 313 list.

The proposed rule contains a detailed summary of EPA's review of the petition to delete Na_2SO_4 as well as additional information on the petition process under section 313 of Title III of SARA.

As of April 26, 1989, EPA had received 32 comments on the proposed rule to delete Na_2SO_4. Thirty-one comments favoring the proposed deletion were received from industry, industry associations, and a Federal agency (the United States Departments of the Interior, Bureau of Mines). One comment opposing the deletion was received from the Miami Group of the Ohio Chapter of the Sierra Club.

The commenter contended that Na_2SO_4 is capable of harming or killing fish and wildlife but did not provide any evidence to support this statement. As discussed above, EPA conducted a petition review which included a toxicity evaluation of Na_2SO_4 and concluded that existing evidence does not demonstrate that Na_2SO_4 causes or can reasonably be anticipated to cause significant adverse health or environmental effects, including harm to fish and wildlife, as set forth in the listing criteria found in section 313(d). Details of this review can be found in the proposed rule.

The commenter also mentioned the large volume of Na_2SO_4 discharged, particularly to public sewer systems, and expressed a concern that these discharges could combine with other substances in the sewer system to create "an even greater threat" to the environment and the sewage treatment process. EPA's review of Na_2SO_4 included an assessment of the environmental fate of Na_2SO_4 following discharge to sewage treatment systems as well as directly to surface waters. Again, EPA found no evidence of significant toxicity of Na_2SO_4 and does not feel the chemical represents a significant threat to the environment or the sewage treatment process. The commenter did not provide any evidence or references to contradict this finding. EPA also notes that, in the absence of significant toxicity concerns, volume alone is not sufficient reason to list a chemical under section 313.

Finally, the commenter stated that communities should be able to track all toxic chemicals released into their environment, in order to allow the communities to make risk determinations themselves. EPA does not disagree with this comment. However, EPA reiterates that no evidence was found to demonstrate toxicity of Na_2SO_4 sufficient to meet the listing criteria under section 313.

Based upon an evaluation of the petition, available toxicity and exposure information, and the comments, EPA affirms its determination that Na_2SO_4 does not meet any of the listing criteria contained in section 313(d). Therefore, EPA is deleting Na_2SO_4 from the list of chemicals subject to reporting under section 313 of Title III of SARA. As a result of this action, facilities will not be required to report releases of Na_2SO_4 that occurred during the 1988 calendar year, and releases that will occur in the future.

II. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of $100 million or more. This rule will decrease the impact of the section 313 reporting requirements on covered facilities and will result in cost-savings to industry, EPA, and States.

This rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by this rule.

C. Paperwork Reduction Act

This rule relieves facilities from having to collect information on the use and releases of Na_2SO_4. Therefore, there were no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 9, 1989.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, 40 CFR Part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for Part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by removing the entire entry for sodium sulfate (solution) under paragraph (a) and removing the entire CAS No. entry for 7757–82–6 under paragraph (b).

[FR Doc. 89–14581 Filed 6–15–89; 4:57 pm]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

RIN 1004–AB46

43 CFR Parts 2800, 2810, 2880, 9230, and 9260

[AA–320–09–4211–02–NCPJ; Circular No. 2619]

Rights-of-way, Trespass, and Law Enforcement—Criminal; Amendment To Provide Procedures for Action on Unauthorized Use, Occupancy, or Development of Public Lands for Transportation etc.

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides procedures for addressing the unauthorized use, occupancy, or development of the public lands for uses and facilities that require authorization pursuant to Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761–1771), the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b), or section 28 of the Mineral Leasing Act (30 U.S.C. 185). These procedures will enhance protection for public lands and resources from unauthorized use and assure a proper monetary return for use, occupancy, or development of the public lands and resources as well as provide a penalty for violation.

EFFECTIVE DATE: July 20, 1989.

ADDRESS: Inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, U.S. Department of the Interior, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Oscar Anderson, (202) 343–5441.

SUPPLEMENTARY INFORMATION: This rulemaking, which would provide procedures for addressing unauthorized use, occupancy, and development of the public lands for uses and facilities that require authorization pursuant to Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761–1771), the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b), or Section 28 of the

Mineral Leasing Act (30 U.S.C. 185), was published as a proposed rulemaking in the Federal Register on September 26, 1988 (53 FR 37319), with a 60-day comment period. A notice of correction was published in the Federal Register on October 6, 1988 (53 FR 39403). During the comment period, nine comments were received, six from Federal agencies, one from an association of county governments, one from an individual and one from a public utility.

Part 2800—Definitions

Two comments suggested that the definition of trespass, as provided in the proposed rulemaking at 43 CFR 2800.0–5(u), be expanded to address uses allowed by prior statute. These suggestions are consistent with the Bureau's intent to safeguard uses allowed by prior statute, and the final rulemaking adopts the suggestions by expanding § 2800.0–5(u) to include uses allowed by prior statute.

One comment suggested that unnecessary and undue degradation be considered a trespass even when associated with a Revised Statute (RS) 2477 right-of-way or grant of easement to mining and settlement claims. The proposed definition provided in 43 CFR 2800.0–5(u) classifies all unnecessary and undue degradation as a trespass without excluding trespasses associated with an RS 2477 right-of-way or grant of easement to mining and settlement claims. The final rule is, therefore, unchanged.

One comment suggested that the proposed definition for "willful trespass" as defined in the proposed rulemaking and "knowing and willful" as defined in 43 CFR 2920 be consistent. Since it is our intent that these terms and their definitions be synonymous, the definition in 43 CFR 2920 will be revised when those regulations are amended.

One comment suggested that trespass should not be considered "willful" where it is "virtually impossible for a person to identify or locate the public lands." The Bureau believes such a situation would qualify as a trespass committed by "mistake or inadvertence," which is criteria for nonwillful trespass as proposed and therefore, the final rule is unchanged.

One comment recommend that a definition of "current use fee, amortization fee, and maintenance fee" be included in final rulemaking. The Bureau recognizes the value in this suggestion and therefore, a definition has been added in the final rule as § 2800.0–5(z).

Unauthorized Use, Occupancy or Development

One comment requested clarification as to whether penalties for unauthorized use, occupancy or development outlined in § 2801.3(c) are to be applied in addition to the actions identified in § 2801.3(b). The penalties are to be applied in addition to the actions identified in § 2801.3(b). 43 CFR 2801.3(b) lists the liabilities of anyone determined by the authorized officer to have trespassed as provided in § 2801.3(a). 43 CFR 2801.3(c) lists the penalties an authorized officer shall apply depending on whether the trespass is determined to be either willful, repeated nonwillful, or not resolved within 30 days after receipt of a written demand.

One comment suggested that 43 CFR 2801.3 (unauthorized use, occupancy or development) as proposed failed to recognize types of right-of-way trespass other than road use. Reference to other kinds of trespass, i.e., for uses requiring authorization pursuant to the regulations in 43 CFR 2800 and 2880, include all types of uses requiring rights-of-way or permits under Title V of the Federal Land Policy and Management Act and the Mineral Leasing Act, as amended. Therefore, the final rule is not changed as suggested.

One comment requested that the starting point of the 30-day period in § 2801.3(c)(1) be identified. The proposed rulemaking identifies the beginning of the 30 day period to be the date of receipt of a written demand. The Bureau recognizes the inherent ambiguity in the term "receipt of a written demand". Therefore, a definition of "written demand" is added as paragraph (y) under § 2800.0–5 and means a written demand in the form of a billing notice for payment of trespass liability which in no case will be less than the minimum amount as identified in § 2801.3(d) and will be delivered by certified mail, return receipt requested, or personally served.

Three comments suggested that the time period for which trespass damages are computed in the proposed rulemaking is inconsistent with 43 CFR 2920.1–2(b). Since the Bureau of Land Management is required by the FLPMA to receive fair market value for the use of the public lands and their resources for the period of use, the 6 year period is not included in the rulemaking.

Two comments recommended increasing the grace period (allowed for nonwillful trespass before assessing penalties) to 45 or 60 days after receipt of a written demand in order to provide adequate time for reaching an amicable settlement. One comment recommended deleting the requirement that penalties for a nonwillful trespass be assessed if the trespass is not resolved within the 30 day period. A definition of "written demand" has been added as § 2800.0–5(y) which will clarify at what time the 30 day period begins. The written demand is the culmination of fact finding meetings and investigation by field officials. The written demand is issued after the trespasser and the authorized officer have finished resolution meetings and the authorized officer has determined the amount of liability due the United States based upon information provided by the trespasser and facts provided from the trespass investigation. The trespasser has 30 days to pay the damages due as identified in the written demand; a penalty is applied if payment is not received within those 30 days. This penalty is provided to insure a timely final resolution to the trespass. Penalty is avoided when one of the three conditions in § 9239.7–1 of this title have been satisfied. Provisions are also allowed in item (c) of 43 CFR 9239.7–1 for the authorized officer to "determine in writing" that a legitimate dispute exists. The authorized officer therefore has the authority at any time prior to issuance of the written demand for payment to adjust liabilities and any time during the 30 day period to acknowledge a legitimate dispute to prevent the penalty assessment. Doubling the rental value as penalty for an excessive delay in resolution is also provided in 43 CFR 2920. Therefore, these comments were not adopted in the final rulemaking.

One comment stated that the proposed rulemaking did not provide for a timeframe to resolve repeated nonwillful or willful trespass. The "30 day" timeframe in the proposed rulemaking at § 2801.3(c)(1) is the measure of time after which penalties for nonwillful trespass are to be addressed for failure to satisfy liabilities by meeting one of the conditions in § 9239.7–1, not the time allowed to resolve a trespass. No specific time period is identified for total trespass investigation and resolution. A clarification is included in § 2801.3(c)(1) and 2800.0–5(y) of the final rulemaking.

One comment suggested allowing the discretionary increase of penalties by 3 to 5 times the rental or road use, amortization and maintenance charges when trespass is repeated. The proposed rulemaking provides for penalties on repeated trespass which we believe are adequate. The suggestion to provide discretionary authority to

increase the penalty for repeated trespass to 5 times the rental value is considered harsh, is inconsistent with existing 43 CFR 2920 regulations, and, therefore, is not adopted.

One comment suggested that the phrase "inception of trespass" in subparagraphs 2801.3(c)(1) and (2) could be interpreted to mean either the date the trespass began or the date a trespass was discovered and a case established. The Bureau believes that the term "inception of trespass" generally is understood to mean the date on which a trespass began (as can be proven by methods normally used in establishing a period in time, such as by photos, witnesses, evidence, admission, etc.). Therefore, the final rule is unchanged.

One comment suggested that the reimbursement of costs incurred by the United States in investigation and termination of a trespass be recovered by utilizing the fee schedule found in 43 CFR 2808.3 and 3808.4 to determine liability for administrative costs. As no trespass cases have been completed by which an average of administrative costs can be determined, the suggested average fee schedule cannot be used at this time. Actual costs determined by accurate record keeping will be needed until a determination can be made as to whether an average fee schedule is proper. Therefore, this suggestion is not adopted in the final rulemaking.

One comment suggested that the requirement of a minimum settlement fee as required in § 2801.3(e) of the proposed rulemaking would hinder resolving trespass and may cost more to collect than an amount which otherwise could be collected. The State Director presently has the authority, with concurrence of the Field Solicitor, to compromise or write off trespass liability up to $20,000 and to suspend collection action (write off) uncollectable trespass liability claims of up to $600. The FLPMA requires receipt of fair market value for use of public lands and resources unless otherwise provided for by statute such as in the Federal Claims Collection Standards. Collection of administrative costs has been upheld, see *Henry Deaton* (101 IBLA 177), and also is provided for in 43 CFR 2920 and 43 CFR 4150. Based upon studies conducted for right-of-way applications, processing a case costs, at a minimum, the amount identified for a Category I (all information contained in the office and no field trips involved) right-of-way application. In light of minimum right-of-way case processing costs and the State Director's authority to compromise or write off debts up to $20,000 for good cause, the concerns of this suggestion are met by existing mechanisms. The suggestion to eliminate the minimum fee requirement in the final rulemaking is not adopted.

One comment suggested that the term "other lands use request" as used in § 2801.3(e) be clarified. The authorities for the final rulemaking may be found at 43 U.S.C. 1181a, 1181b, 1733, 1740, 1761–1771 and 30 U.S.C. 185. These authorities include rights-of-way and permits under Title V of FLPMA, the Mineral Leasing Act, and Tram Roads on the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O&C). Lands actions which may be authorized by other authorities are not included in this final rulemaking, and no further explanation is required.

One comment suggested changing the wording in 43 CFR 2801.3(g) and 43 CFR 9262.1 to "knowing and willful trespassers shall be tried" before a United States Magistrate rather than "may be tried." The wording "may be tried" is consistent with wording in the Federal Land Policy and Management Act (43 U.S.C. 1733). Therefore, this suggestion is not adopted in the final rulemaking.

One comment suggested that public utilities providing service to parties accused of trespass be allowed to remain in service until the party receiving the services is legally judged to be in trespass. In the instance described, both the public utility and the party being served would be in trespass, i.e., the utility company is in trespass for service lines and the party served by the utility company is in trespass for the utilities to which the utility lines run. The utility and the party being served are legally judged to be in trespass only after the appeal period for a notice of trespass has expired without appeal, decision on appeal has been made, or the trespasser judged to be in trespass in court proceedings. The utility may file a use permit or right-of-way application requesting authorization to continue service pending the outcome of all appeals to satisfy any concern. Therefore, the suggested change is not adopted as no removal is required until a use, occupancy or development is considered a trespass in accordance with existing law.

One comment suggested that an authorized officer be able to resolve an unauthorized use, occupancy, or development through an amicable settlement, by giving the trespasser a grant for his unauthorized use and not require a formal trespass procedure. As stated previously, provisions are available which allow the State Director to compromise or write off debts of up to $20,000. This allows the flexibility suggested where cause exists. Also, without formal notice, a trespasser is not legally notified of his liability. Therefore, this suggestion is not adopted in the final rulemaking.

One comment suggested that a trespasser not be allowed to file a bond, conditioned upon payment of the damages due, as provided in § 9239.7–1 item (b) in order to be eligible for a new permit, license, authorization or grant. The rulemaking should allow new authorizations to any trespasser who has filed a bond to compensate the United States for outstanding trespass liabilities. The allowance provides for issuance of new authorizations pending payment of outstanding liabilities yet assures that the United States will recover just compensation. This provision will allow timely completion of multiple applications in progress. Additional penalties for willful trespass are provided in § 9262.1. Therefore, this suggestion is not included in the final rulemaking.

One comment suggested clarification of § 9239.7–1 (rights-of-way trespass on public lands) for the types of uses which shall not be allowed to a party with an unresolved trespass. Existing rules provide that no new right-of-way or permit under 43 CFR Parts 2800, 2810 or 2880 may be issued to a trespasser until one of the conditions identified in Section 9239.7–1 is met. Therefore, the final rulemaking is unchanged.

One comment suggested that the rule should be revised to delete from § 9239.7–1 the words "and received by the applicant." In most cases, it is difficult to determine when a letter has been received by the addressee. It is not unusual for weeks to pass before proof of delivery has been received by the Bureau. Therefore, the final rule is changed to state that the grant takes effect on the date of the authorized officer's signature.

Part 9260—Law Enforcement—Criminal

One comment asked whether a trial before a United States Magistrate as specified in 43 CFR Part 9262–1 and provision for fine and/or imprisonment are pursued in addition to rent and other charges imposed under § 2801.3. Criminal penalties are applied in addition to civil penalties, where the trespasser is convicted in a criminal prosecution. Such prosecution may be brought independently of civil damage recovery proceedings.

The principal author of this final rulemaking is Oscar Anderson, Division of Lands and Realty, Bureau of Land

Management, assisted by the Division of Legislation and Regulatory Management, Bureau of Land Management.

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

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

The changes made by this final rulemaking will not have an effect upon the legitimate users of the public lands and resources. The changes made by the final rulemaking will provide procedures for processing cases involving instances of illegal use of the public lands for rights-of-way and road use purposes, for recovering fair market value of the use of public lands and resources for right-of-way and road use purposes, for providing penalties for repeated and willful illegal use, for recovering adminstrative costs for processing these cases, and for rehabilitation costs of public lands and resources damaged through illegal use. The impact of the final rulemaking will be the same, regardless of the size of the entity involved in an illegal use.

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

For the reasons set out above, 43 CFR Parts 2800, 2810, 2880, 9230, 9260 are amended as set forth below:

James M. Hughes,

Deputy Assistant Secretary of the Interior.

May 25, 1989.

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

1. The authority citation for Part 2800 is revised to read:

Authority: 43 U.S.C. 1733, 1740, and 1761–1771.

2. Section 2800.0–3 is revised to read:

§ 2800.0–3 Authority.

Sections 303, 310, and 501–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1761–1771) authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits, easements, and rights-of-way.

3. Section 2800.0–5 is amended by adding the definition of "trespass" as subparagraph (u), "willful trespass" as subparagraph (v), "nonwillful trespass" as subparagraph (w), and "unnecessary or undue degradation" as subparagraph (x), "written demand" as (y) and "road use, amortization and maintenance" as (z).

§ 2800.0–5 Definitions.

* * * * *

(u) "Trespass" means any use, occupancy or development of the public lands or their resources without authorization to do so from the United States where authorization is required, or which exceeds such authorization or which causes unnecessary or undue degradation of the land or resources.

(v) "Willful trespass" means the voluntary or conscious trespass as defined at § 2801 of this title. The term does not include an act made by mistake or inadvertence. The term includes actions taken with criminal or malicious intent. A consistent pattern of trespass may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of mistake or inadvertence. Conduct which is otherwise regarded as being knowing or willful does not become innocent through the belief that the conduct is reasonable or legal.

(w) "Nonwillful trespass" means a trespass, as defined at § 2801.3(a) of this title, committed by mistake or inadvertence.

(x) "Unnecessary or undue degradation" means surface disturbance greater than that which would normally result when the same or a similar activity is being accomplished by a prudent person in a usual, customary, and proficient manner that takes into consideration the effects of the activity on other resources and land uses, including those resources and uses outside the area of activity. This disturbance may be either nonwillful or willful as described in § 2800.0–5(v) through (w), depending upon the "circumstances",

(y) "written demand" means a request in writing for payment and/or rehabilitation in the form of a billing delivered by certified mail, return receipt requested or personally served.

(z) "road use, amortization and maintenance charges" means the fees charged for commercial use of a road owned or controlled by the Bureau of Land Management. These fees normally include use fees, amortization fees and maintenance fees.

4. Section 2801.3 is revised to read:

§ 2801.3 Unauthorized use, occupancy, or development.

(a) Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations of that part and that has not been so authorized, or that is beyond the scope and specific limitations of such an authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in Section 2800.0–5.

(b) Anyone determined by the authorized officer to be in violation of paragraph (a) of this section shall be notified in writing of such trespass and shall be liable to the United States for:

(1) Reimbursement of all costs incurred by the United States in the investigation and termination of such trespass;

(2) The rental value of the lands, as provided for in § 2803.1–2 of this title, for the current year and past years of trespass, or where applicable, the cumulative value of the current use fee, amortization fee, and maintenance fee as determined by the authorized officer for unauthorized use of any road administered by the BLM; and

(3) Rehabilitating and stabilizing any lands that were harmed by such trespass. If the trespasser does not rehabilitate and stabilize the lands within the time set by the authorized officer in the notice, he/she shall be liable for the costs incurred by the United States in rehabilitating and stabilizing such lands.

(c) In addition to amounts due under the provisions of paragraph (b) of this section, the following penalties shall be assessed by the authorized officer:

(1) For all nonwillful trespass which is not resolved by meeting one of the conditions identified in § 9239.7–1 within 30 days of receipt of a written demand under paragraph (b) of this section—an amount equal to the rental value and for roads, an amount equal to the charges for road use, amortization and maintenance which have accrued since the inception of the trespass;

(2) For repeated nonwillful or willful trespass—an amount that is 2 times the rental value and for roads, an amount 2 times the charges for road use, amortization and maintenance which have accrued since the inception of the trespass.

(d) In no event shall settlement for trespass computed pursuant to paragraphs (b) and (c) of this section be less than the processing fee for a Category I application for provided for in § 2808.3–1 of this title for nonwillful

trespass or less than 3 times this value for repeated nonwillful or knowing and willfull trespass. In all cases the trespasser shall pay whichever is the higher of the computed penalty or minimum penalty amount.

(e) Failure to satisfy the requirements of § 2801.3(b) of this title shall result in the denial of any right-of-way, temporary land use, road use application or other lands use request filed by not yet granted until there has been compliance with the provisions of § 9239.7–1 of this title.

(f) Any person adversely affected by a decision of the authorized officer issued under this section may appeal that decision under the provisions of Part 4 of this title.

(g) In addition to the civil penalties provided for in this part, any person who knowingly and willfully violates the provisions of § 2801.3(a) of this title may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both, as provided by section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and § 9262.1 of this title.

PART 2810—TRAMROADS AND LOGGING ROADS

1. The authority citation for Part 2810 is revised to read:

Authority: 43 U.S.C. 1181a, 1181b, 1732, 1733, and 1740.

2. Section 2812.0–3 is revised to read:

§ 2812.0–3 Authority.

Sections 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1740), and the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b), provide for the conservation and management of the Oregon and California Railroad lands and the Coos Bay Wagon Road lands and authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits and rights-of-way.

3. Section 2812.1–3 is revised to read:

§ 2812.1–3 Unauthorized use, occupancy, or development.

Any use, occupancy, or development of the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O & C) lands (as is defined in 43 CFR 2812.0–5(e)), for tramroads without an authorization pursuant to this subpart, or which is beyond the scope and specific limitations of such an authorization, or that cause unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2800.0–5. Anyone determined by the authorized officer to be in violation of this section shall be notified of such trespass in writing and shall be liable to the United States for all costs and payments determined in the same manner as set forth at § 2801.3, Part 2800 of this title.

PART 2880—RIGHTS-OF-WAY UNDER THE MINERALS LEASING ACT

1. The authority citation for Part 2880 is revised as follows:

Authority: 30 U.S.C. 185, Section 28, unless otherwise noted.

2. Section 2881.3 is revised to read:

§ 2881.3 Unauthorized use, occupancy or development.

Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations in this part, and that has not been so authorized, or that is beyond the scope and specific limitations of such authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2800.0–5. Anyone determined by the authorized officer to be in trespass on the public lands shall be notified in writing of such trespass and shall be liable to the United States for all costs and payments determined in the same manner as set forth at § 2801.3, Part 2800 of this title.

PART 9230—TRESPASS

1. The authority citation for Part 9230 is revised to read:

Authority: 43 U.S.C. 1732, 1733, 1740, and 1761–1771.

2. Section 9239.7–1 is revised to read:

§ 9239.7–1 Public lands.

The filing of an application under Part 2800, 2810, or 2880, of this chaper does not authorize the applicant to use or occupy the public lands for right-of-way purposes, except as provided at §§ 2800.0–5(m), 2802.1(d) and 2882.1, until written authorization has been issued by the authorized officer. Any unauthorized occupancy or use of public lands or improvements for right-of-way purposes constitutes a trespass against the United States for which the trespasser is liable for costs, damages, and penalties as provided in §§ 2801.3, 2812.1–3, and 2881.3, of this title. No new permit, license, authorization or grant of any kind shall be issued to a trespasser until:

(a) The trespass claim is fully satisfied; or

(b) The trespasser files a bond conditioned upon payment of the amount of damages determined to be due the United States; or

(c) The authorized officer determines in writing that there is a legitimate dispute as to the fact of the trespasser's liability or as to the extent of his liability and the trespasser files a bond in an amount determined by the authorized officer to be sufficient to cover payment of a future court judgment in favor of the United States.

PART 9260—LAW ENFORCEMENT—CRIMINAL

The authority citation for Part 9260 is revised to read:

Authority: 16 U.S.C. 433; 16 U.S.C. 4601–6a; 16 U.S.C. 670j; 16 U.S.C. 1246(i); 16 U.S.C. 1338; 18 U.S.C. 1851–1861; 43 U.S.C. 315(a); 43 U.S.C. 1061, 1063; 43 U.S.C. 1733.

2. Subpart 9262 is revised to read:

§ 9262.0 Authority.

43 U.S.C. 1732, 1733, 1740, 1761–1771.

§ 9262.1 Penalties for unauthorized use, occupancy, or development of public lands.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) any person who knowingly and willfully violates the provisions of §§ 2801.3(a), 2812.1–3, 2881.3, or 2920.1–2(a) of this title, by using public lands without the requisite authorization, may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both.

[FR Doc. 89–14561 Filed 6–19–89; 8:45 am]
BILLING CODE 4310–84–M

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43 CFR Public Land Order 6730

[CO–930–09–4214–10; C–45714]

Withdrawal of National Forest System Land for Protection of Recreational Values; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 374 acres of National Forest System lands from mining for a period of 50 years for the protection of existing and planned recreational facilities near Aspen, Colorado. The lands have been and remain open to such other forms of disposition as may by law be made of National Forest System Lands and to mineral leasing.

EFFECTIVE DATE: June 20, 1989.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–236–1768.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands, which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2) to protect existing and planned recreational values which are a part of the Aspen Mountain Ski Area:

Sixth Principal Meridian

White River National Forest

T. 10 S., R. 84 W.,
- Sec. 18, S½SE¼NW¼NW¼, SW¼NW¼, W½SW¼, and W½E½SW¼, excluding patented lands;
- Sec. 19, W½E½W½, W½W½, W½SE¼ NE¼NW¼, W½E½SE¼NW¼, E½E½ SW¼, W½SW¼NW¼SE¼, W½NW¼ SW¼SE¼, and SW¼SW¼SE¼, excluding patented lands;
- Sec. 30, W½W½NE¼, W½E½SW¼NE¼, NW¼, N½N½NE¼SW¼, SW¼NW¼ NE¼SW¼, SW¼NE¼NE¼SW¼, N½ NE¼NW¼SW¼, and N½NW¼NW¼ SE¼, excluding patented lands.

T. 10 S., R. 85 W.,
- Sec. 13, SE¼NE¼, E½SW¼NE¼, E½W½ SE¼, and E½SE¼, excluding patented lands;
- Sec. 24, E½E½ and E½W½NE¼, excluding patented lands;
- Sec. 25, NE¼NE¼, NE¼SE¼NE¼, and NE¼SE¼SE¼NE¼, excluding patented lands.

The areas described aggregate approximately 374 acres in Pitkin County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Date: June 13, 1989.

Ralph W. Tarr,

Solicitor.

[FR Doc. 89–14513 Filed 6–19–89; 8:45 am]

BILLING CODE 4310–JB–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[Gen. Docket No. 87–24; DA 89–642]

Cable Television Services; Program Exclusivity in the Cable and Broadcast Industry; Technical Amendment and Correction.

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment and correction.

SUMMARY: The Commission is correcting errors, by technical amendment, in the preamble, ordering clause and regulatory text of the summarized *Report and Order* (*R&O*), Gen. Docket 87–24, which appeared in the **Federal Register** on July 19, 1988 (53 FR 27167). The correction to the regulatory text is presented as a technical amendment to the Code of Federal Regulations (CFR), because the codified text of the rule is being corrected after the revision date of its CFR title. In addition, the Commission is correcting errors in the summary contained in the supplementary information section, ordering clauses and regulatory text of the summarized *Memorandum Opinion and Order* (*MO&O*), Gen. Docket No. 87–24, which appeared in the **Federal Register** on March 29, 1989 (54 FR 12913).

EFFECTIVE DATES: The effective date for this technical amendment and correction is June 12, 1989. The effective date for §§ 76.92–76.95 revised at 53 FR 27171 is changed to August 18, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: In the *R&O*, the Commission reinstituted syndicated exclusivity rules applicable to cable systems, and modified existing network non-duplication rules. In brief, the syndicated exclusivity rules permit broadcasters to negotiate with their program suppliers for exclusive exhibition rights with respect to syndicated (*i.e.*, non-network) programming carried by cable systems located within certain geographic parameters. Similarly, the network non-duplication rules permit network-affiliated broadcasters to contract for exclusive exhibition *vis-a-vis* cable, but with respect to network programming. In response to various petitions for reconsideration, the Commission adopted the *MO&O*, which amended the syndicated exclusivity rules in certain regards and further modified the network non-duplication rules. The summarized versions appearing in the **Federal Register** of both the *R&O* (53 FR 27167) and the *MO&O* (54 FR 12913) contained errors which are discussed briefly below and are corrected by technical amendment (in the case of the *R&O*) or by this notice (in the case of the *MO&O*).

Technical Amendments to the Summarized Report and Order

The following technical amendments are made in FR Doc. 88–16187, *Cable Television Services; Program Exclusivity in the Cable and Broadcast Industry*, published in the **Federal Register** on July 19, 1988 (53 FR 27167).

1. The information set forth under the "Effective Date" caption of the preamble on page 27167, third column, erroneously included an exception for §§ 76.92–76.95 from the August 18, 1988, effective date. This exception is deleted and the information under the "Effective Date" caption is revised to read as follows: "August 18, 1988.".

2. Under the "Ordering Clause" heading on page 27170, in the third column, in the second full paragraph (numbered 27), lines 1–3, which read, "Accordingly, IT IS ORDERED THAT, under the authority contained in sections 4(i), 4(g), 302, 303(a) and 604 of", are revised to read as follows: "Accordingly, IT IS ORDERED THAT, under the authority contained in sections 4(i), 4(j), 301, 303, 601(4) and 624 of".

Technical Amendment of Program Exclusivity Rules

List of Subjects in 47 CFR Part 76:

Cable television.

Technical Amendment

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

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

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 76.5 of the rules is amended by revising paragraph (nn) to read as follows:

§ 76.5 Definitions.

* * * * *

(nn) A "syndicated program" is any program sold, licensed, distributed or offered to television station licensees in more than one market within the United States other than as network programming as defined in § 76.5(o).

Corrections of the Summarized Memorandum Opinion and Order

The following corrections are made in FR Doc. 89-7386, *Cable Television Services; Program Exclusivity in the Cable and Broadcast Industry*, published in the **Federal Register** on March 29, 1989 (54 FR 12913).

1. On page 12917, first column, third full paragraph (numbered 31), line 3, change "require that" to "allow".

2. On page 12917, first column, third full paragraph (numbered 31), line 6, change "this *MO&O*" to "the amendments adopted by this *MO&O* to".

3. On page 12917, first column, third full paragraph (numbered 31), line 12, change "this *MO&O,*" to "the amendments adopted by this *MO&O,*".

4. Under the "Ordering Clauses" heading on page 12918, second column, third full paragraph (numbered 46), line 3, change "302" to "301".

§ 76.94 [Corrected]

5. On page 12918, third column, paragraph (b) of § 76.94, line 6, change "contract." to "contract; provided, however, that for such contracts signed before May 5, 1989, a broadcaster may provide notice on or before June 19, 1989.".

§ 76.97 [Corrected]

6. On page 12919, second column, § 76.97, first line of text, change "provisions" to "network non-duplication protection and exceptions thereto".

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-14428 Filed 6-19-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 88-139; FCC 89-180]

Reorganization and Deregulation of Part 97, Rules Governing the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action amends the amateur service rules by reorganizing them to accommodate technological advances and changes in operating practices. It also eliminates unnecessary, obsolete and redundant rules. The rule amendments are necessary to foster a regulatory environment that promotes maximum operator flexibility and innovative experimentation. The effect of the rule amendments is to provide the flexibility needed by amateur operators in order to achieve the objectives of the service.

EFFECTIVE DATE: September 1, 1989.

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

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted May 31, 1989, and released June 9, 1989. The complete text of this Commission action, including the rule amendments, 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 Report and Order, including the rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The amateur service rules have been amended by restructuring them to provide a more meaningful, easy-to-use body of regulations for present and future amateur operators. Unnecessary, obsolete, and redundant rule provisions have been deleted.

2. The emission designators were simplified into a simple system based upon nine terms that are already familiar to amateur operators, such as phone, RTTY, and CW. This makes it possible for amateur operators to understand immediately their authorized emissions. It also promotes flexibility and experimentation by clarifying the wide range of emission types available.

3. The existing language for the quiet hours rule has been retained. This will alleviate the concerns of the commenters in this proceeding who felt that the proposed rule would broaden the Commission's authority to restrict amateur station operations.

4. In addition to the foregoing, these final rules clarify and codify amateur service policies and practices. For example, the exceptions to the prohibitions against transmission of business communications and against broadcasting have been codified.

5. The amended rules are set forth at the end of this document.

6. Pursuant to section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities, because these entities may not use the amateur radio services for commercial radiocommunication. Morever, these rules will not require the use of or significantly enhance the sale of any additional amateur service apparatus.

7. These rules have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to decrease the information collection burden that the Commission imposes on the public. This proposed reduction in information collection burden is subject to approval by the Office of Management and Budget as prescribed by the Act.

8. The amended rules are issued under the authority of 47 U.S.C. 154(i) and 303(r).

List of Subjects in 47 CFR Part 97

Amateur radio, Antennas, Emissions, Third-party traffic.

Donna R. Searcy,

Secretary.

Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended, as follows:

PART 97—AMATEUR RADIO SERVICE

Subpart A—General Provisions

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97.17 Application for new license.
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97.103 Station licensee responsibilities.
97.105 Control operator duties.
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97.111 Authorized transmissions.
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97.201 Auxiliary station.
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97.209 Earth station.
97.211 Telecommand station.
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Subpart D—Technical Standards

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97.303 Frequency sharing requirements.
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97.309 RTTY and data emission digital codes.
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97.313 Transmitter power standards.
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97.317 Standards for type acceptance of external RF power amplifiers.

Subpart E—Providing Emergency Communications

97.401 Operation during a disaster.
97.403 Safety of life and protection of property.
97.405 Station in distress.
97.407 Radio amateur civil emergency service.

Subpart F—Qualifying Examination Systems

97.501 Qualifying for an amateur operator license.
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97.507 Preparing an examination.
97.509 Administering an examination.
97.511 Technician, General, Advanced, and Amateur Extra Class operator license examination.
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97.515 Volunteer examiner requirements.
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97.519 Coordinating examination sessions.
97.521 VEC qualifications.
97.523 Question pools.
97.525 Accrediting VEs.
97.527 Reimbursement for expenses.

Appendix 1 Places Where the Amateur Services is Regulated by the FCC

Appendix 2 VEC Regions

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

Subpart A—General Provisions

§ 97.1 Basis and purpose.

The rules and regulations in this Part are designed to provide an amateur radio service having a fundamental purpose as expressed in the following principles:

(a) Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.

(b) Continuation and extension of the amateur's proven ability to contribute to the advancement of the radio art.

(c) Encouragement and improvement of the amateur service through rules which provide for advancing skills in both the communication and technical phases of the art.

(d) Expansion of the existing reservoir within the amateur radio service of trained operators, technicians, and electronics experts.

(e) Continuation and extension of the amateur's unique ability to enhance international goodwill.

§ 97.3 Definitions.

(a) The definitions of terms used in Part 97 are:

(1) *Amateur operator.* A person holding a written authorization to be the control operator of an amateur station.

(2) *Amateur radio services.* The amateur service, the amateur-satellite service and the radio amateur civil emergency service.

(3) *Amateur-satellite service.* A radiocommunication service using stations on Earth satellites for the same purpose as those of the amateur service.

(4) *Amateur service.* A radiocommunication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.

(5) *Amateur station.* A station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.

(6) *Automatic control.* The use of devices and procedures for control of a station when it is transmitting so that compliance with the FCC Rules is achieved without the control operator being present at a control point.

(7) *Auxiliary station.* An amateur station transmitting communications point-to-point within a system of cooperating amateur stations.

(8) *Bandwidth.* The width of a frequency band outside of which the mean power of the total emission is attenuated at least 26 dB below the mean power of the total emission, including allowances for transmitter drift or Doppler shift.

(9) *Beacon.* An amateur station transmitting communications for the purposes of observation of propagation and reception or other related experimental activities.

(10) *Broadcasting.* Transmissions intended for reception by the general public, either direct or relayed.

(11) *Control operator.* An amateur operator designated by the licensee of a station to be responsible for the transmissions from that station to assure compliance with the FCC Rules.

(12) *Control point.* The location at which the control operator function is performed.

(13) *CSCE.* Certificate of successful completion of an examination.

(14) *Earth station.* An amateur station located on, or within 50 km of, the Earth's surface intended for communications with space stations or with other Earth stations by means of one or more other objects in space.

(15) *EIC.* Engineer in Charge of an FCC Field Facility.

(16) *External RF power amplifier.* A device capable of increasing power output when used in conjunction with, but not an integral part of, a transmitter.

(17) *External RF power amplifier kit.* A number of electronic parts, which, when assembled, is an external RF power amplifier, even if additional parts are required to complete assembly.

(18) *FAA.* Federal Aviation Administration.

(19) *FCC.* Federal Communications Commission.

(20) *Frequency coordinator.* An entity, recognized in a local or regional area by amateur operators whose stations are eligible to be auxiliary or repeater stations, that recommends transmit/receive channels and associated operating and technical parameters for such stations in order to avoid or minimize potential interference.

(21) *Harmful interference.* Interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with the Radio Regulations.

(22) *Indicator.* Words, letters or numerals appended to and separated from the call sign during the station identification.

(23) *Information bulletin.* A message directed only to amateur operators consisting solely of subject matter of direct interest to the amateur service.

(24) *International Morse code.* A dot-dash code as defined in International Telegraph and Telephone Consultative Committee (CCITT) Recommendation F.1 (1984), Division B, I. Morse code.

(25) *ITU.* International Telecommunication Union.

(26) *Line A.* Begins at Aberdeen, WA, running by great circle arc to the

intersection of 48°N, 120°W, thence along parallel 48°N, to the intersection of 95°W, thence by great circle arc through the southernmost point of Duluth, MN, thence by great circle arc to 45°N, 85°W, thence southward along meridian 85°W, to its intersection with parallel 41°N, thence along parallel 41°N, to its intersection with meridian 82°W, thence by great circle arc through the southernmost point of Bangor, ME, thence by great circle arc through the southernmost point of Searsport, ME, at which point it terminates.

(27) *Local control.* The use of a control operator who directly manipulates the operating adjustments in the station to achieve compliance with the FCC Rules.

(28) *National Radio Quiet Zone.* The area in Maryland, Virginia and West Virginia Bounded by 39° 15'N on the north, 78° 30'W on the east, 37° 30'N on the south and 80° 30'W on the west.

(29) *Question pool.* All current examination questions for a designated written examination element.

(30) *Question set.* A series of examination on a given examination selected from the question pool.

(31) *Radio Regulations.* The latest ITU *Radio Regulations* to which the United States is a party.

(32) *RACES* (radio amateur civil emergency service). A radio service using amateur stations for civil defense communications during periods of local, regional or national civil emergencies.

(33) *Remote control.* The use of a control operator who indirectly manipulates the operating adjustments in the station through a control link to achieve compliance with the FCC Rules.

(34) *Repeater.* An amateur station that automatically retransmits the signals of other stations.

(35) *Space station.* An amateur station located more than 50 km above the Earth's surface.

(36) *Spurious emission.* An emission, or frequencies outside the necessary bandwidth of a transmission, the level of which may be reduced without affecting the information being transmitted.

(37) *Telecommand station.* An amateur station that transmits communications to initiate, modify or terminate functions of a space station.

(38) *Third party communications.* A message from the control operator (first party) of an amateur station to another amateur station control operator (second party) on behalf of another person (third party).

(39) *VE.* Volunteer examiner.

(40) *VEC.* Volunteer-examiner coordinator.

(b) The definitions of technical smybols used in this Part are:

(1) *EHF* (extremely high frequency). The frequency range 30–300 GHz.

(2) *HF* (high frequency). The frequency range 3–30 MHz.

(3) *Hz.* Hertz.

(4) *m.* Meters.

(5) *MF* (medium frequency). The frequency range 300–3000 kHz.

(6) *PEP* (peak envelope power). The average power supplied to the antenna transmission line by a transmitter during one RF cycle at the crest of the modulation envelope taken under normal operating conditions.

(7) *RF.* Radio frequency.

(8) *SHF* (super-high frequency). The frequency range 3–30 GHz.

(9) *UHF* (ultra-high frequency). The frequency range 300–3000 MHz.

(10) *VHF* (very-high frequency). The frequency range 30–300 MHz.

(11) *W.* Watts.

(c) The following terms are used in this Part to indicate emission types. Refer to § 2.201 of the FCC Rules, *Emission, modulation and transmission characteristics*, for information on emission type designators.

(1) *CW.* International Morse code telegraphy emissions having designators with A, C, H, J or R as the first symbol; 1 as the second symbol; A or B as the third symbol; and emissions J2A and J2B.

(2) *Data.* Telemetry, telecommand and computer communications emissions having designators with A, C, D, F, G, H, J or R as the first symbol; 1 as the second symbol; D as the third symbol; and emission J2D. Only a digital code of a type specifically authorized in this Part may be transmitted.

(3) *Image.* Facsimile and television emissions having designators with A, C, D, F, G, H, J or R as the first symbol; 1, 2 or 3 as the second symbol; C or F as the third symbol; and emissions having B as the first symbol; 7, 8 or 9 as the second symbol; W as the third symbol.

(4) *MCW.* Tone-modulated international Morse code telegraphy emissions having designators with A, C, D, F, G, H or R as the first symbol; 2 as the second symbol; A or B as the third symbol.

(5) *Phone.* Speech and other sound emissions having designators with A, C, D, F, G, H, J or R as the first symbol; 1, 2 or 3 as the second symbol; E as the third symbol. Also speech emissions having B as the first symbol; 7, 8 or 9 as the second symbol; E as the third symbol. MCW for the purpose of performing the station identification procedure, or for providing telegraphy practice interspersed with speech. Incidental tones for the purpose of selective calling or alerting or to control the level of a demodulated signal may also be considered phone.

(6) *Pulse.* Emissions having designators with K, L, M, P, Q, V or W as the first symbol; 0, 1, 2, 3, 7, 8, 9 or X as the second symbol; A, B, C, D, E, F, N, W or X as the third symbol.

(7) *RTTY.* Narrow-band direct-printing telegraphy emissions having designators with A, C, D, F, G, H, J or R as the first symbol; 1 as the second symbol; B as the third symbol; and emission J2B. Only a digital code of a type specifically authorized in this Part may be transmitted.

(8) *SS.* Spread-spectrum emissions using bandwidth-expansion modulation emissions having designators with A, C, D, F, G, H, J or R as the first symbol; X as the second symbol; X as the third symbol. Only a SS emission of a type specifically authorized in this Part may be transmitted.

(9) *Test.* Emissions containing no information having the designators with N as the third symbol. Test does not include pulse emissions with no information or modulation unless pulse emissions are also authorized in the frequency band.

§ 97.5 Station license required.

(a) When a station is transmitting on any amateur service frequency from a geographic location within 50 km of the Earth's surface where the amateur service is regulated by the FCC, the person having physical control of the apparatus must hold an FCC-issued written authorization for an amateur station.

(b) When a station is transmitting on any amateur service frequency from a location within 50 km of the Earth's surface and aboard any vessel or craft that is documented or registered in the United States, the person having physical control of the apparatus must hold an FCC-issued written authorization for an amateur station.

(c) When a station is transmitting on any amateur-satellite service frequency from a location more than 50 km above the Earth's surface aboard any craft that is documented or registered in the United States, the person having physical control of the apparatus must hold an FCC-issued written authorization for an amateur station.

(d) The types of written authorizations that permit amateur station operation where the amateur service is regulated by the FCC are:

(1) An operator/primary station license (FCC Form 660) issued to the person by the FCC. A primary station license is issued only to a person, together with an operator license on the

same document. Every amateur operator licensed by the FCC must have one, but only one, primary station license. Except a representative of a foreign government, any person who qualifies by examination is eligible to apply for an operator/primary station license.

(2) A club station license (FCC form 660) issued to the person by the FCC. A club station license is issued only to the person who is the license trustee designated by an officer of the club. The trustee must hold an FCC-issued Amateur Extra, Advanced, General, or Technician operator license. The club must be composed of at least two persons and must have a name, a document of organization, management and a primary purpose devoted to amateur service activities consistent with this Part.

(3) A military recreation station license (FCC Form 660) issued to the person by the FCC. A military recreation station license is issued only to the person who is the license custodian designated by the official in charge of the United States military recreational premises where the station is situated. The custodian must not be a representative of a foreign government. The custodian need not hold an amateur operator license.

(4) A RACES station license (FCC Form 660) issued to the person by the FCC. A RACES station license is issued only to the person who is the license custodian designated by the official responsible for the governmental agency served by that civil defense organization. The custodian must not be a representative of a foreign government. The custodian must be the civil defense official responsible for coordination of all civil defense activities in the area concerned. The custodian need not hold an amateur operator license.

(5) A reciprocal permit for alien amateur licensee (FCC Form 610–AL) issued to the person by the FCC. A reciprocal permit for alien amateur licensee is issued only to a person who is a citizen of a country with which the United States has arrangements to grant reciprocal operating permits to visiting alien amateur operators. The person must be a citizen of the same country that issued the amateur service license. No person who is a citizen of the United States, regardless of any other citizenship also held, is eligible for a reciprocal permit for alien amateur licensee. No person holding an FCC-issued amateur service license will be issued a reciprocal permit for alien amateur license.

(6) An amateur service license issued to the person by the Government of Canada. The person must be a Canadian citizen.

(e) The written authorization for an amateur station authorizes the use in accordance with the FCC Rules of all transmitting apparatus under the physical control of the station licensee at points where the amateur service is regulated by the FCC. The original written authorization document or a photocopy thereof must be retained at the station.

§ 97.7 Control operator required.

When transmitting, each amateur station must have a control operator. Only a person holding one of the following documents may be the control operator of a station:

(a) An operator/primary station license (FCC Form 660) issued to the person by the FCC.

(b) A reciprocal permit for alien amateur licensee (FCC Form 610–AL) issued to the person by the FCC.

(c) An amateur service license issued to a Canadian citizen by the Government of Canada.

§ 97.9 Operator license.

(a) There are 5 classes of operator licenses: Novice, Technician, General, Advanced and Amateur Extra. An operator license authorizes the holder to be the control operator of a station with the privileges of the operator class specified on the license. The license document or a photocopy thereof must be in the personal possession of the licensee at all times when the person is the control operator of a station.

(b) A person holding a Novice, Technician, General, or Advanced Class operator license who has properly filed with the FCC an application for a higher operator class which has not yet been acted upon, and who holds a CSCE indicating that the person completed the necessary examinations within the previous 365 days is authorized to exercise the rights and privileges of the higher operator class.

§ 97.11 Stations aboard ships or aircraft.

(a) The installation and operation of an amateur station on a ship or aircraft must be approved by the master of the ship or pilot in command of the aircraft.

(b) The station must be separate from and independent of all other radio apparatus installed on the ship or aircraft, except a common antenna may be shared with a voluntary ship radio installation. The station's transmissions must not cause interference to any other apparatus installed on the ship or aircraft.

(c) The station must not constitute a hazard to the safety of life or property. For a station aboard an aircraft, the apparatus shall not be operated while the aircraft is operating under Instrument Flight Rules, as defined by the FAA, unless the station has been found to comply with all applicable FAA Rules.

§ 97.13 Restrictions on station location.

(a) Before placing an amateur station on land of environmental importance or that is significant in American history, architecture or culture, the licensee may be required to take certain actions prescribed by §§ 1.1305–1.1319 of the FCC Rules.

(b) A station within 1600 m (1 mile) of an FCC monitoring facility must protect that facility from harmful interference. Failure to do so could result in imposition of operating restrictions upon the amateur station by an EIC pursuant to § 97.121 of this Part. Geographical coordinates of the facilities that require protection are listed in § 0.121(c) of the FCC Rules.

§ 97.15 Station antenna structures.

(a) Unless the amateur station licensee has received prior approval from the FCC, no antenna structure, including and radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site.

(b) Unless the amateur station licensee has received prior approval from the FCC, no antenna structure, at an airport or heliport that is available for public use and is listed in the *Airport Directory* of the current *Airman's Information Manual* or in either the *Alaska* or *Pacific Airman's Guide and Chart Supplement;* or at an airport or heliport under construction that is the subject of a notice or proposal on file with the FAA, and except for military airports, it is clearly indicated that the airport will be available for public use; or at an airport or heliport that is operated by the armed forces of the United States; or at a place near any of these airports or heliports, may be higher than:

(1) 1 m above the airport elevation for each 100 m from the nearest runway longer than 1 km within 6.1 km of the antenna structure.

(2) 2 m above the airport elevation for each 100 m from the nearest runway longer than 1 km within 3.1 km of the antenna structure.

(3) 4 m above the airport elevation for each 100 m from the nearest landing pad within 1.5 km of the antenna structure.

(c) An amateur station antenna structure no higher than 6.1 m (20 feet) above ground level at its site or no

higher than 6.1 m above any natural object or existing manmade structure, other than an antenna structure, is exempt from the requirements of paragraphs (a) and (b) of this section.

(d) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction marking and lighting, are contained in Part 17 of the FCC Rules, *Construction, Marking, and Lighting of Antenna Structures.* To request approval to place an antenna structure higher than the limits specified in paragraphs (a), (b), and (c) of this section, the licensee must notify the FAA on FAA Form 7460–1 and the FCC on FCC Form 854.

(e) Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. [State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose. [*See* PRB–1, 101 FCC 2d 952 (1985) for details.]

§ 97.17 Application for new license.

(a) Any qualified person is eligible to apply for an amateur service license.

(b) Each application for a new operator/primary station license must be made on FCC Form 610. Each application for a reciprocal permit for alien amateur licensee must be made on FCC Form 610–A. No new license for a club, military recreation, or RACES station will be issued.

(c) Each application for a new operator/primary station license and each application involving a change in operator class must be submitted to the VEs administering the qualifying examination.

(d) Any qualified person is eligible to apply for a reciprocal permit for alien amateur licensee. The application must be submitted to the FCC, P.O. Box 1020, Gettysburg, PA 17326.

(e) No person shall obtain or attempt to obtain, or assist another person to obtain or attempt to obtain, an operator license or reciprocal permit for alien amateur licensee by fraudulent means.

(f) A call sign will be assigned systematically to each station. The FCC will issue public announcements detailing the policies and procedures of the call sign assignment system. The FCC will not grant any request for a specific call sign.

§ 97.19 Application for a renewed or modified license.

(a) Each application for a renewed or modified operator/primary station license must be made on FCC Form 610. Each application for a renewed or modified club, military recreation or RACES station license must be made on FCC Form 610–B. A reciprocal permit for alien amateur licensee is not renewable. A new reciprocal permit may be issued upon proper application.

(b) Each application for a renewed or modified amateur service license must be accompanied by a photocopy of the license document or the original document. Each application for a modified operator license involving a change in operator class must be submitted to the VEs administering the qualifying examination. All other applications must be submitted to: FCC, P.O. Box 1020, Gettysburg, PA 17326.

(c) When the licensee has submitted a timely application for renewal of an unexpired license (between 60 and 90 days prior to the end of the license term is recommended), the licensee may continue to operate until the disposition of the application has been determined. If a license expires, application for renewal may be made during a grace period of 2 years after the expiration date. During this grace period, the expired license is not valid. A license renewed during the grace period must be dated as of the date of the renewal.

§ 97.21 Mailing address and station location.

Each application for an amateur service license and each application for a reciprocal permit for alien amateur licensee must show a mailing address and a station location (the addresses may be the same) in an area where the amateur service is regulated by the FCC. The mailing address must be one where the licensee can receive mail delivery by the United States Postal Service. The station location must be a place where a station can be physically located. [A Postal Service box, RFD number, or general delivery is unsuitable as a station location.]

§ 97.23 License term.

(a) An amateur service license is normally issued for a 10-year term.

(b) A reciprocal permit for alien amateur licensee is normally issued for a 1-year term.

§ 97.25 FCC modification of station license.

(a) The FCC may modify a station license, either for a limited time or for the duration of the term thereof, if it determines:

(1) That such action will promote the public interest, convenience and necessity; or

(2) That such action will promote fuller compliance with the provisions of the Communications Act of 1934, as amended, or of any treaty ratified by the United States.

(b) When the FCC makes such a determination, it will issue an order of modification. The order will not become final until the licensee is notified in writing of the proposed action and the grounds and reasons therefor. The licensee will be given reasonable opportunity of no less than 30 days to protest the modification; except that, where safety of life or property is involved, a shorter priod of notice may be provided. Any protest by a licensee of an FCC order of modification will be handled in accordance with the provisions of 47 U.S.C. 316.

§ 97.27 Replacement license.

Each licensee or permittee whose original document is lost, mutilated or destroyed must request a replacement. The request must be made to: FCC, P.O. Box 1020, Gettysburg, PA 17326. A statement of how the document was lost, mutilated or destroyed must be attached to the request. A replacement license must bear the same expiration date as the license that it replaces.

Subpart B—Station Operation Standards

§ 97.101 General standards.

(a) In all respects not specifically covered by FCC Rules each amateur station must be operated in accordance with good engineering and good amateur practice.

(b) Each station licensee and each control operator must cooperate in selecting transmitting channels and in making the most effective use of the amateur service frequencies. No frequency will be assigned for the exclusive use of any station.

(c) At all times and on all frequencies, each control operator must give priority to stations providing emergency communications, except to stations transmitting communications for training drills and tests in RACES.

(d) No amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.

§ 97.103 Station licensee responsibilities.

(a) The station licensee is responsible for the proper operation of the station in accordance with the FCC Rules. When the control operator is a different amateur operator than the station

licensee, both persons are equally responsible for proper operation of the station.

(b) The station licensee must designate the station control operator. The FCC will presume that the station licensee is also the control operator, unless documentation to the contrary is in the station records.

(c) The station licensee must make the station and the station records available for inspection upon request by an FCC representative. When deemed necessary by an EIC to assure compliance with the FCC Rules, the station licensee must maintain a record of station operations containing such items of information as the EIC may require in accord with § 0.314(x) of the FCC Rules.

§ 97.105 Control operator duties.

(a) The control operator must ensure the immediate proper operation of the station, regardless of the type of control.

(b) A station may only be operated in the manner and to the extent permitted by the privileges authorized for the class of operator license held by the control operator.

§ 97.107 Alien control operator privileges.

(a) The privileges available to a control operator holding an amateur service license issued by the Government of Canada are:

(1) The terms of the *Convention Between the United States and Canada (TIAS No. 2508) Relating to the Operation by Citizens of Either Country of Certain Radio Equipment or Stations in the Other Country;*

(2) The operating terms and conditions of the amateur service license issued by the Government of Canada; and

(3) The applicable provisions of the FCC Rules, but not to exceed the control operator privileges of an FCC-issued Amateur Extra Class operator license.

(b) The privileges available to a control operator holding an FCC-issued reciprocal permit for alien amateur licensee are:

(1) The terms of the agreement between the alien's government and the United States;

(2) The operating terms and conditions of the amateur service license issued by the alien's government;

(3) The applicable provisions of the FCC Rules, but not to exceed the control operator privileges of an FCC-issued Amateur Extra Class operator license; and

(4) None, if the holder of the reciprocal permit has obtained an FCC-issued operator/primary station license.

(c) At any time the FCC may, in its discretion, modify, suspend, or cancel the amateur service privileges within or over any area where radio services are regulated by the FCC of any Canadian amateur service licensee or alien reciprocal permittee.

§ 97.109 Station control.

(a) Each amateur station must have at least one control point.

(b) When a station is being locally controlled, the control operator must be at the control point. Any station may be locally controlled.

(c) When a station is being automatically controlled, the control operator need not be at the control point. Only stations specifically designated elsewhere in this Part may be automatically controlled. Automatic control must cease upon notification by an EIC that the station is transmitting improperly or causing harmful interference to other stations. Automatic control must not be resumed without prior approval of the EIC.

(d) No station may be automatically controlled while transmitting third-party traffic, except a station retransmitting digital packet radio communications on the 6 m and shorter wavelength bands. Such stations must be using the American Radio Relay League, Inc. *AX.25 Amateur Packet-Radio Link-Layer Protocol, Version 2.0,* October 1984 (or compatible). The retransmitted messages must originate at a station that is being locally or remotely controlled.

§ 97.111 Authorized transmissions.

(a) An amateur station may transmit the following types of two-way communications:

(1) Transmissions necessary to exchange messages with other stations in the amateur service, except those in any country whose administration has given notice that it objects to such communications. The FCC will issue public notices of current arrangements for international communications;

(2) Transmissions necessary to exchange messages with a station in another FCC-regulated service while providing emergency communications;

(3) Transmissions necessary to exchange messages with a United States government station, necessary to providing communications in RACES; and

(4) Transmissions necessary to exchange messages with a station in a service not regulated by the FCC, but authorized by the FCC to communicate with amateur stations. An amateur station may exchange messages with a participating United States military station during an Armed Forces Day Communications Test.

(b) In addition to one-way transmissions specifically authorized elsewhere in this Part, an amateur station may transmit the following types of one-way communications:

(1) Brief transmissions necessary to make adjustments to the station;

(2) Brief transmissions necessary to establishing two-way communications with other stations;

(3) Transmissions necessary to remotely control a device from a distant location;

(4) Transmissions necessary to providing emergency communications;

(5) Transmissions necessary to assisting persons learning, or improving proficiency in, the international Morse code; and

(6) Transmissions necessary to disseminate information bulletins.

§ 97.113 Prohibited transmissions.

(a) No amateur station shall transmit any communication the purpose of which is to facilitate the business or commercial affairs of any party. No station shall transmit communications as an alternative to other authorized radio services, except as necessary to providing emergency communications. A station may, however, transmit communications to:

(1) Facilitate the public's safe observation of, or safe participation in, a parade, race, marathon or similar public gathering. No amateur station shall transmit communications concerning moving, supplying and quartering observers and participants for any sponsoring organization unless the principal beneficiary of such communications is the public and any benefit to the sponsoring organization is incidental.

(2) Inform other amateur operators of the availability of apparatus normally used in an amateur station, including such apparatus for sale or trade. This exception is not authorized to any person seeking to derive a profit by buying or selling such apparatus on a regular basis.

(b) No station shall transmit messages for hire or for material compensation, direct or indirect, paid or promised. The control operator of a club station, however, may accept compensation for such periods of time during which the station is transmitting telegraphy practice or information bulletins provided that:

(1) The station transmits the telegraphy practice and information bulletins for at least 40 hours per week;

(2) The station schedules operations on all amateur service MF and HF bands

using reasonable measures to maximize coverage;

(3) The schedule of normal operating times and frequencies is published at least 30 days in advance of the actual transmissions; and

(4) The control operator does not accept any direct or indirect compensation for periods during which the station is transmitting any other material.

(c) No station shall transmit communications in order to engage in any form of broadcasting, nor to engage in any activity related to program production or newsgathering for broadcasting purposes. A station may, however, transmit communications to convey news information about an event for dissemination to the public when the following conditions are present:

(1) The information involves the immediate safety of life of individuals or the immediate protection of property;

(2) The information is directly related to the event;

(3) The information cannot be transmitted by any other means because normal communications systems have been disrupted or because there are no other communication systems available at the place where the information is originated; and

(4) Other means of communication could not be reasonably provided before or at the time of the event.

(d) No station shall transmit: music; radiocommunications or messages for any purpose, or in connection with any activity, that is contrary to federal, state, or local law; messages in codes or ciphers where the intent is to obscure the meaning (except where specifically excepted elsewere in the Part); obscene, indecent, or profane words, language, or meaning; and/or false or deceptive messages or signals.

(e) No station shall retransmit programs or signals emanating from any type of radio station other than an amateur station, except communications originating on United States Government frequencies between a space shuttle and its associated Earth stations. Prior approval for such retransmissions must be obtained from the National Aeronautics and Space Administration. Such retransmissions must be for the exclusive use of amateur operators.

(f) No amateur station, except an auxiliary, repeater or space station, may automatically retransmit the radio signals of other amateur stations.

§ 97.115 Third party communications.

(a) An amateur station may transmit messages for a third party to:

(1) Any station within the jurisdiction of the United States.

(2) Any station within the jurisdiction of any foreign government whose administration has made arrangements with the United States to allow amateur stations to be used for transmitting international communications on behalf of third parties. No station shall transmit messages for a third party to any station within the jurisdiction of any foreign government whose administration has not made such an arrangement. This prohibition does not apply to a message for any third party who is eligible to be a control operator of the station.

(b) The third party may participate in stating the message where:

(1) The control operator is present at the control point and is continuously monitoring and supervising the third party's participation; and

(2) The third party is not a prior amateur service licensee whose license was revoked; suspended for less than the balance of the license term and the suspension is still in effect; suspended for the balance of the license term and relicensing has not taken place; or surrendered for cancellation following notice of revocation, suspension or monetary forfeiture proceedings. The third party may not be the subject of a cease and desist order which relates to amateur service operation and which is still in effect.

(c) At the end of an exchange of international third party communications, the station must also transmit in the station identification procedure the call sign of the station with which a third party message was exchanged.

§ 97.117 International communications.

Transmissions to a different country, where permitted, shall be made in plain language and shall be limited to messages of a technical nature relating to tests, and, to remarks of a personal character for which, by reason of their unimportance, recourse to the public telecommunications service is not justified.

§ 97.119 Station identification.

(a) Each amateur station, except a space station or telecommand station, must transmit its assigned call sign on its transmitting channel at the end of each communication, and at least every 10 minutes during a communication, for the purpose of clearly making the source of the transmissions from the station known to those receiving the transmissions. No station may transmit unidentified communications or signals, or transmit as the station call sign, any call sign not authorized to the station.

(b) The call sign must be transmitted with an emission authorized for the transmitting channel in one of the following ways:

(1) By a CW emission. When keyed by an automatic device used only for identification, the speed must not exceed 20 words per minute;

(2) By a phone emission in the English language. Use of a phonetic alphabet as an aid for correct station identification is encouraged;

(3) By a RTTY emission when all or part of the communications are transmitted in the same digital code as the station identification, or when the communications consist of a data emission transmitted on the VHF 6 m or shorter wavelength band;

(4) By an image emission conforming to the applicable transmission standards, either color or monochrome, of § 73.682(a) of the FCC Rules when all or part of the communications are transmitted in the same image emission; or

(5) By a CW or phone emission during SS emission transmission on a narrow bandwidth frequency segment. Alternatively, by the changing of one or more parameters of the emission so that a conventional CW or phone emission receiver can be used to determine the station call sign.

(c) An indicator may be included with the call sign. It must be separated from the call sign by the slant mark or by any suitable word that denotes the slant mark.

(d) When the operator license class held by the control operator exceeds that of the station licensee, an indicator consisting of the call sign assigned to the control operator's station must be included after the call sign.

(e) When the control operator is using privileges on the basis of holding a CSCE, an indicator must be included after the call sign as follows:

(1) KT for Technician Class operator;

(2) AG for General Class operator;

(3) AA for Advanced Class operator; or

(4) AE for Amateur Extra Class operator.

(f) When the station is transmitting under the authority of a reciprocal permit for alien amateur licensee, an indicator consisting of the appropriate letter-numeral designating the station location must be included before the call sign issued to the station by the licensing country. When the station is transmitting under the authority of an amateur service license issued by the

Government of Canada, a station location indicator must be included after the call sign. At least once during each intercommunication, the identification announcement must include the geographical location as nearly as possible by city and state, commonwealth or possession.

(g) A self-assigned indicator may be included after the call sign. The identifier must not conflict with any other indicator specified by the FCC Rules or by a prefix assigned to another country.

§ 97.121 Restricted operation.

(a) If the operation of an amateur station causes general interference to the reception of transmissions from stations operating in the domestic broadcast service when receivers of good engineering design, including adequate selectivity characteristics, are used to receive such transmissions, and this fact is made known to the amateur station licensee, the amateur station shall not be operated during the hours from 8 p.m. to 10:30 p.m., local time, and on Sunday for the additional period from 10:30 a.m. until 1 p.m., local time, upon the frequency or frequencies used when the interference is created.

(b) In general, such steps as may be necessary to minimize interference to stations operating in other services may be required after investigation by the FCC.

Subpart C—Special Operations

§ 97.201 Auxiliary station.

(a) Any amateur station licensed to a holder of a Technician, General, Advanced or Amateur Extra Class operator license may be an auxiliary station. A holder of a Technician, General, Advanced or Amateur Extra Class operator license may be the control operator of an auxiliary station, subject to the privileges of the class of operator license held.

(b) An auxiliary station may transmit only on the 1.25 m and shorter wavelength bands, except the 220.0–220.5 MHz, 431–433 MHz and 435–438 MHz segments.

(c) Where an auxiliary station causes harmful interference to another auxiliary station, the licensees are equally and fully responsible for resolving the interference unless one station's operation is recommended by a frequency coordinator and the other station's is not. In that case, the licensee of the non-coordinated auxiliary station has primary responsibilty to resolve the interference.

(d) An auxiliary station may be automatically controlled only when it is part of a system that includes a repeater station also being automatically controlled.

(e) An auxiliary station may transmit one-way communications.

§ 97.203 Beacon station.

(a) Any amateur station licensed to a holder of a Technician, General, Advanced or Amateur Extra Class operator license may be a beacon. A holder of a Technician, General, Advanced or Amateur Extra Class operator license may be the control operator of a beacon, subject to the privileges of the class of operator license held.

(b) A beacon must not concurrently transmit on more than 1 channel in the same amateur service frequency band, from the same station location.

(c) The transmitter power of a beacon must not exceed 100 W.

(d) A beacon may be automatically controlled while it is transmitting on the 28.20–28.30 MHz, 50.06–50.08 MHz, 144.05–144.06 MHz, 220.05–220.06 MHz, 222.05–222.06 MHz or 432.07–432.08 MHz segments, or on the 33 cm and shorter wavelength bands.

(e) Before establishing an automatically controlled beacon in the National Radio Quiet Zone or before changing the transmitting frequency, transmitter power, antenna height or directivity, the station licensee must give written notification thereof to the Interference Office, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, WV 24944.

(1) The notification must include the geographical coordinates of the antenna, antenna ground elevation above mean sea level (AMSL), antenna center of radiation above ground level (AGL), antenna directivity, proposed frequency, type of emission, and transmitter power.

(2) If an objection to the proposed operation is received by the FCC from the National Radio Astronomy Observatory at Green Bank, Pocahontas County, WV, for itself or on behalf of the Naval Research Laboratory at Sugar Grove, Pendleton County, WV, within 20 days from the date of notification, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate.

(f) A beacon must cease transmissions upon notification by an EIC that the station is operating improperly or causing undue interference to other operations. The beacon may not resume transmitting without prior approval of the EIC.

(g) A beacon may transmit one-way communications.

§ 97.205 Repeater station.

(a) Any amateur station licensed to a holder of a Technician, General, Advanced or Amateur Extra Class operator license may be a repeater. A holder of a Technician, General, Advanced or Amateur Extra Class operator license may be the control operator of a repeater, subject to the privileges of the class of operator license held.

(b) A repeater may receive and retransmit only on the 10 m and shorter wavelength frequency bands except the 28.0–29.5 MHz, 50.0–52.0 MHz, 144.0–144.5 MHz, 145.5–146.0 MHz, 220.0–220.5 MHz, 431.0–433.0 MHz and 435.0–438.0 MHz segments.

(c) Where the transmissions of a repeater cause harmful interference to another repeater, the two station licensees are equally and fully responsible for resolving the interference unless the operation of one station is recommended by a frequency coordinator and the operation of the other station is not. In that case, the licensee of the non-coordinated repeater has primary responsibility to resolve the interference.

(d) A repeater may be automatically controlled.

(e) Ancillary functions of a repeater that are available to users on the input channel are not considered remotely controlled functions of the station. Limiting the use of a repeater to only certain user stations is permissible.

(f) Before establishing a repeater in the National Radio Quiet Zone or before changing the transmitting frequency, tramsitter power, antenna height or directivity, or the location of an existing repeater, the station licensee must give written notification thereof to the Interference Office, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, WV 24944.

(1) The notification must include the geographical coordinates of the station antenna, antenna ground elevation above mean sea level (AMSL), antenna center of radiation above ground level (AGL), antenna directivity, proposed frequency, type of emission, and transmitter power.

(2) If an objection to the proposed operation is received by the FCC from the National Radio Astronomy Observatory at Green Bank, Pocahontas County, WV, for itself or on behalf of the Naval Research Laboratory at Sugar Grove, Pendleton County, WV, within 20 days from the date of notification, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate.

§ 97.207 Space station.

(a) Any amateur station licensed to a holder of an Amateur Extra Class operator license may be a space station. A holder of any class operator license may be the control operator of a space station, subject to the privileges of the class of operator license held by the control operator.

(b) A space station must be capable of effecting a cessation of transmissions by telecommand whenever such cessation is ordered by the FCC.

(c) The following frequency bands and segments are authorized to space stations:

(1) The 15 m, 12 m, 10 m, 6 mm, 4 mm, 2 mm and 1 mm bands; and

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 2400–2450 MHz, 3.40–3.41 GHz, 5.83–5.85 GHz, 10.45–10.50 GHz and 24.00–24.05 GHz segments.

(d) A space station may automatically retransmit the radio signals of Earth stations and other space stations.

(e) A space station may transmit one-way communications.

(f) Results of measurements made in the space station, including those related to the function of the station, transmitted by a space station may consist of specially coded messages intended to facilitate communications.

(g) The licensee of each space station must give two written, pre-space station notifications to the Private Radio Bureau, FCC, Washington, DC 20554. Each notification must be in accord with the provisions of Articles 11 and 13 of the Radio Regulations.

(1) The first notification is required no less than 27 months prior to initiating space station transmissions and must specify the information required by Appendix 4 and Resolution No. 642 of the Radio Regulations.

(2) The second notification is required no less than 5 months prior to initiating space station transmissions and must specify the information required by Appendix 3 and Resolution No. 642 of the Radio Regulations.

(h) The licensee of each space station must give a written, in-space station notification to the Private Radio Bureau, FCC, Washington, DC 20554, no later than 7 days following initiation of space station transmissions. The notification must update the information contained in the pre-space notification.

(i) The licensee of each space station must give a written, post-space station notification to the Private Radio Bureau, FCC, Washington, DC 20554, no later than 3 months after termination of the space station transmissions. When the termination is ordered by the FCC, notification is required no later than 24 hours after termination.

§ 97.209 Earth station.

(a) Any amateur station may be an Earth station. A holder of any class operator license may be the control operator of an Earth station, subject to the privileges of the class of operator license held by the control operator.

(b) The following frequency bands and segments are authorized to Earth stations:

(1) The 15 m, 12 m, 10 m, 6 mm, 4 mm, 2 mm and 1 mm bands; and

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 1260–1270 MHz and 2400–2450 MHz, 3.40–3.41 GHz, 5.65–5.67 GHz, 10.45–10.50 GHz and 24.00–24.05 GHz segments.

§ 97.211 Telecommand station.

(a) Any amateur station designated by the licensee of a space station is eligible to transmit as a telecommand station for that space station, subject to the privileges of the class of operator license held by the control operator.

(b) A telecommand station may transmit special codes intended to obscure the meaning of telecommand messages to the station in space operation.

(c) The following frequency bands and segments are authorized to telecommand stations:

(1) The 15 m, 12 m and 10 m bands, 6 mm, 4 mm, 2 mm and 1 mm bands; and

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 1260–1270 MHz and 2400–2450 MHz, 3.40–3.41 GHz, 5.65–5.67 GHz, 10.45–10.50 GHz and 24.00–24.05 GHz segments.

(d) A telecommand station may transmit one-way communications.

§ 97.213 Remote control of a station.

An amateur station may be remotely controlled where:

(a) There is a radio or wireline control link between the control point and the station sufficient for the control operator to perform his/her duties. If radio, the control link must use an auxiliary station. A control link using a fiber optic cable or another telecommunication service is considered wireline.

(b) Provisions are incorporated to limit transmission by the station to a period of no more than 3 minutes in the event of malfunction in the control link.

(c) The station is protected against making, willfully or negligently, unauthorized transmissions.

(d) A photocopy of the station license and a label with the name, address, and telephone number of the station licensee and at least one designated control operator is posted in a conspicuous place at the station location.

§ 97.215 Remote control of model craft.

An amateur station transmitting signals to control a model craft may be operated as follows:

(a) The station identification procedure is not required for transmissions directed only to the model craft, provided that a label indicating the station call sign and the station licensee's name and address is affixed to the station transmitter.

(b) The control signals are not considered codes or ciphers intended to obscure the meaning of the communication.

(c) The transmitter power must not exceed 1 W.

Subpart D—Technical Standards

§ 97.301 Authorized frequency bands.

The following transmitting frequency bands are available to an amateur station located within 50 km of the Earth's surface, within the specified ITU Region and outside any area where the amateur service is regulated by another country or another United States government agency.

(a) For a station having a control operator holding a Technician, General, Advanced or Amateur Extra Class operator license:

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (Paragraph)
VHF	MHz	MHz	MHz	
6 m		50–54	50–54	(a)
2 m	144–146	144–148	144–148	(a).
1.25 m		220–225		(a), (b), (e).
UHF	MHz	MHz	MHz	
70 cm	430–440	420–450	430–440	(a), (b), (f).

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (Paragraph)
33 cm		902–928		(a), (b), (g).
23 cm	1240–1300	1240–1300	124–1300	(j).
13 cm	2300–2310	2300–2310	2300–2310	(a), (b), (j).
do	2390–2450	2390–2450	2390–2450	(a), (b), (j).
SHF	GHz	GHz	GHz	
9 cm		3.3–3.5	3.3–.5	(a), (b), (k), (l).
5 cm	5.650–5.850	5.650–5.925	5.650–5.850	(a), (b), (m).
3 cm	10.00–10.50	10.00–10.50	10.00–10.50	(a), (c), (i), (n).
1.2 cm	24.00–24.25	24.00–24.25	24.00–24.25	(a), (b), (i), (o).
EHF	GHz	GHz	GHz	
6 mm	47.0–47.2	47.0–47.2	47.0–47.2	
4 mm	75.5–81.0	75.5–81.0	75.5–81.0	(b), (c), (h).
2.5 mm	119.98–120.02	119.98–120.02	119.98–120.02	(k), (p).
2 mm	142–149	142–149	142–149	(b), (c), (h), (k).
1 mm	241–250	241–250	241–250	(b), (c), (h), (q).
	above 300	above 300	above 300	(k).

(b) For a station having a control operator holding an Amateur Extra Class operator license:

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements. See § 97.303 (Paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (b), (c).
HF	MHz	MHz	MHz	
80 m	3.50–3.75	3.50–3.75	3.50–3.75	(a).
75 m	3.75–3.80	3.75–4.00	3.75–3.90	(a).
40 m	7.0–7.1	7.0–7.3	7.0–7.1	(a).
30 m	10.10–10.15	10.10–10.15	10.10–10.15	(d).
20 m	14.00–14.35	14.00–14.35	14.00–14.35	
17 m	18.068–18.168	18.068–18.168	18.068–18.168	
15 m	21.00–21.45	21.00–21.45	21.00–21.45	
12 m	24.89–24.99	24.89–24.99	24.89–24.99	
10 m	28.0–29.7	28.0–29.7	28.0–29.7	

(c) For a station having a control operator holding an Advanced Class operator license:

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements See § 97.303, (Paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (b), (c).
HF	MHz	MHz	MHz	
80 m	3.525–3.750	3.525–3.750	3.525–3.750	(a).
75 m	3.775–3.800	3.775–4.000	3.775–3.900	(a).
40 m	7.025–7.100	7.025–7.300	7.025–7.100	(a).
30 m	10.10–10.15	10.10–10.15	10.10–10.15	(d).
20 m	14.025–14.150	14.025–14.150	14.025–14.150	
Do	14.175–14.350	14.175–14.350	14.175–14.350	
17 m	18.068–18.168	18.068–18.168	18.068–18.168	
15 m	21.025–21.200	21.025–21.200	21.025–21.200	
Do	21.30–21.45	21.30–21.45	21.30–21.45	
12 m	24.89–24.99	24.89–24.99	24.89–24.99	
10 m	28.0–29.7	28.0–29.7	28.0–29.7	

(d) For a station having a control operator holding a General Class operator license:

Wavelength band	ITU–Region 1	ITU–Region 2	ITU–Region 3	Sharing requirements. See § 97.303 (Paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (b), (c).

Wavelength band	ITU-Region 1	ITU-Region 2	ITU-Region 3	Sharing requirements. See § 97.303 (Paragraph)
HF	MHz	MHz	MHz	
80 m	3.525-3.750	3.525-3.750	3.525-3.750	(a).
75 m		3.85-4.00		(a).
40 m	7.025-7.100	7.025-7.100	7.025-7.100	(a).
Do		7.225-7.300		(a).
30 m	10.10-10.15	10.10-10.15	10.10-10.15	(d).
20 m	14.025-14.150	14.025-14.150	14.025-14.150	
Do	14.225-14.350	14.225-14.350	14.225-14.350	
17 m	18.068-18.168	18.068-18.168	18.068-18.168	
15 m	21.025-21.200	21.025-21.200	21.025-21.100	
Do	21.30-21.45	21.30-21.45	21.30-21.45	
12 m	24.89-24.99	24.89-24.99	24.89-24.99	
10 m	28.0-29.7	28.0-29.7	28.0-29.7	

(e) For a station having a control operator holding a Technician or Novice Class operator license:

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements. See § 97.303 (Paragraph)
HF	MHz	MHz	MHz	
80 m	3.70-3.75	3.70-3.75	3.70-3.75	(a).
40 m	7.050-7.075	7.10-7.15	7.050-7.075	(a).
15 m	21.10-21.20	21.10-21.20	21.10-21.20	
10 m	28.1-28.5	28.1-28.5	28.1-28.5	

(f) For a station having a control operator holding a Novice Class operator license:

Wavelength band	ITU-Region 1	ITU-Region 2	ITU-Region 3	Sharing requirements. See § 97.303 (Paragraph)
VHF	MHz	MHz	MHz	
1.25 m		222.10-223.91		(a), (b), (e).
UHF	MHz	MHz	MHz	
23 cm	1270-1295	1270-1295	1270-1295	(i).

§ 97.303 Frequency sharing requirements.

The following is a summary of the frequency sharing requirements that apply to amateur station transmissions on the frequency bands specified in § 97.301 of this Part. (For each ITU Region, each frequency band allocated to the amateur service is designated as either a secondary service or a primary service. A station in a secondary service must not cause harmful interference to, and must accept interference from, stations in a primary service. See §§ 2.105 and 2.106 of the FCC Rules, *United States Table of Frequency Allocations* for complete requirements.)

(a) Where, in adjacent ITU Regions or Subregions, a band of frequencies is allocated to different services of the same category, the basic principle is the equality of right to operate. The stations of each service in one region must operate so as not to cause harmful interference to services in the other Regions or Subregions. (See ITU *Radio Regulations*, No. 346 (Geneva, 1979).)

(b) No amateur station transmitting in the 1900–2000 kHz segment, the 1.25 m band, the 70 cm band, the 33 cm band, the 13 cm band, the 9 cm band, the 5 cm band, the 3 cm band, the 24.05–24.24 GHz segment, the 76–81 GHz segment, the 144–149 GHz segment and the 241–248 GHz segment shall cause harmful interference to, nor is protected from interference due to the operation of, the Government radiolocation service.

(c) No amateur station transmitting in the 1900–2000 kHz segment, the 3 cm band, the 76–81 GHz segment, the 144–149 GHz segment and the 241–248 GHz segment shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the non-Government radiolocation service.

(d) No amateur station transmitting in the 30 meter band shall cause harmful interference to stations authorized by other nations in the fixed service. The licensee of the amateur station must make all necessary adjustments, including termination of transmissions, if harmful interference is caused.

(e) The 1.25 m band is allocated to the amateur, fixed and mobile services in the United States on a co-primary basis. The basic principle that applies is the equality of right to operate. Amateur, fixed and mobile stations must operate so as not to cause harmful interference to each other.

(f) In the 70 cm band:

(1) No amateur station shall transmit from north of Line A in the 420–430 MHz segment.

(2) The 420–430 MHz segment is allocated to the amateur service in the United States on a secondary basis, and is allocated in the fixed and mobile (except aeronautical mobile) services in the International Table of allocations on a primary basis. No amateur station transmitting in this band shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the fixed and mobile (except aeronautical mobile) services.

(3) The 430–440 MHz segment is allocated to the amateur service on a secondary basis in ITU Regions 2 and 3. No amateur station transmitting in this band in ITU Regions 2 and 3 shall cause

harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the radiolocation service. In ITU Region 1, the 430–440 MHz segment is allocated to the amateur service on a co-primary basis with the radiolocation service. As between these two services in this band in ITU Region 1, the basic principle that applies is the equality of right to operate. Amateur stations authorized by the United States and radiolocation stations authorized by other nations in ITU Region 1 shall operate so as not to cause harmful interference to each other.

(4) No amateur station transmitting in the 449.5–450 MHz segment shall cause interference to, nor is protected from itnerference due to the operation of stations in, the space operation service and the space research service or Government or non-Government stations for space telecommand.

(g) In the 33 cm band:

(1) No amateur station shall transmit from within the States of Colorado and Wyoming, bounded on the south by latitude 39°N., on the north by latitude 42°N., on the east by longitude 105°W., and on the west by longitude 108°W. This band is allocated on a secondary basis to the amateur service subject to not causing harmful interference to, and not receiving protection from any interference due to the operation of, industrial, scientific and medical devices, automatic vehicle monitoring systems or Government stations authorized in this band.

(2) No amateur station shall transmit from those portions of the States of Texas and New Mexico bounded on the south by latitude 31°41′N., on the north by latitude 34°30′N., on the east by longitude 104°11′W., and on the west by longitude 107°30′W.

(h) No amatuer station transmitting in the 23 cm band, the 3 cm band, the 24.05–24.25 GHz segment, the 76–81 GHz segment, the 144–149 GHz segment and the 241–248 GHz segment shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the radiolocation service.

(i) In the 1240–1260 MHz segment, no amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the radionavigation-satellite service.

(j) In the 13 cm band:

(1) The amateur service is allocated on a secondary basis in all ITU Regions. In ITU Region 1, no amateur station shall cause harmful interference to, and is not protected from interference due to the operation of, stations authorized by other nations in the fixed service. In ITU Regions 2 and 3, no station shall cause harmful interference to, and is not protected from interference due to the operation of, stations authorized by other nations in the fixed, mobile and radiolocation services.

(2) In the United States, 2300–2310 MHz segment is allocated to the amateur service on a co-secondary basis with the Government fixed and mobile services. In this segment, the fixed and mobile services must not cause harmful interference to the amateur service. No amateur station transmitting in the 2400–2450 MHz segment is protected from interference due to the operation of industrial, scientific and medical devices on 2450 MHz.

(k) No amateur station transmitting in the 3.332–3.339 GHz and 3.3458–3525 GHz segments, the 2.5 mm band, the 144.68–144.98 GHz, 145.45–145.75 and 146.82–147.12 GHz segments and the 343–348 GHz segment shall cause harmful interference to stations in the radio astronomy service. No amateur station transmitting in the 300–302 GHz, 324–326 GHz, 345–347 GHz, 363–365 GHz and 379–381 GHz segments shall cause harmful interference to stations in the space research service (passive) or Earth exploration-satellite service (passive).

(l) In the 9 cm band:

(1) In ITU Regions 2 and 3, the band is allocated to the amateur service on a secondary basis.

(2) In the United States, the band is allocated to the amateur service on a co-secondary basis with the non-Government radiolocation service.

(3) In the 3.3–3.4 GHz segment, no amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the radiolocation service.

(4) In the 3.4–3.5 GHz segment, no amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the fixed and fixed-satellite service.

(m) In the 5 cm band:

(1) In the 5.650–5.725 GHz segment, the amateur service is allocated in all ITU Regions on a co-secondary basis with the space research (deep space) service.

(2) In the 5.725–5.850 GHz segment, the amateur service is allocated in all ITU Regions on a secondary basis. No amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the fixed-satellite service in ITU Region 1.

(3) No amateur station transmitting in the 5.725–5.875 GHz segment is protected from interference due to the operation of industrial, scientific and medical devices operating on 5.8 GHz.

(4) In the 5.650–5.850 GHz segment, no amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the radiolocation service.

(5) In the 5.850–5.925 GHz segment, the amateur service is allocated in ITU Region 2 on a co-secondary basis with the radiolocation service. In the United States, the segment is allocated to the amateur service on a secondary basis to the non-Government fixed-satellite service. No amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the fixed, fixed-satellite and mobile services. No amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the non-Government fixed-satellite service.

(n) In the 3 cm band:

(1) In the United States, the 3 cm band is allocated to the amateur service on a co-secondary basis with the non-government radiolocation service.

(2) In the 10.00–10.45 segment in ITU Regions 1 and 3, no amateur station shall cause interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the fixed and mobile services.

(o) No amateur station transmitting in the 1.2 cm band is protected from interference due to the operation of industrial, scientific and medical devices on 24.125 GHz. In the United States, the 24.05–24.25 GHz segment is allocated to the amateur service on a co-secondary basis with the non-government radiolocation and Government and non-government Earth exploration-satellite (active) services.

(p) The 2.5 mm band is allocated to the amateur service on a secondary basis. No amateur station transmitting in this band shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the fixed, inter-satellite and mobile services.

(q) No amateur station transmitting in the 244–246 GHz segment of the 1 mm band is protected from interference due to the operation of industrial, scientific and medical devices on 245 GHz.

§ 97.305 Authorized emission types.

(a) An amateur station may transmit a CW emission on any frequency authorized to the control operator.

(b) A station may transmit a test emission on any frequency authorized to the control operator for brief periods for experimental purposes, except that no pulse modulation emission may be transmitted on any frequency where pulse is not specifically authorized.

(c) A station may transmit the following emission types on the frequencies indicated, as authorized to the control operator, subject to the standards specified in § 97.307(f) of this Part.

Wavelength band	Frequencies	Emission types authorized	Standards see § 97.307(f), paragraph:
MF:			
160 m	Entire band	Phone image, RTTY, data	(1), (2), and (3).
HF:			
80 m	Entire band	RTTY, data	(3), (9).
75 m	Entire band	Phone, image	(1), (2).
40 m	7.000–7.075 MHz	RTTY, data	(c), (9).
40 m	7.075–7.100 MHz	Phone, image	(1), (2), (9) and (11).
40 m	7.10–7.15 MHz	RTTY, data	(1), (9).
40 m	7.15–7.30 MHz	Phone, image	(1), (2).
30 m	Entire band	RTTY, data	(3).
20 m	14.00–14.15 MHz	RTTY, data	(3).
20 m	14.15–14.35 MHz	Phone, image	(1), (2).
17 m	18.068–18.110 MHz	RTTY, data	(3).
17 m	18.110–18.168 MHz	Phone, image	(1), (2).
15 m	21.0–21.2 MHz	RTTY, data	(3), (9).
15 m	21.20–21.45 MHz	Phone, image	(1), (2).
12 m	24.89–24.93 MHz	RTTY, data	(3).
12 m	24.93–24.99 MHz	Phone, image	(1), (2).
10 m	28.0–28.3 MHz	RTTY, data	(4).
10 m	28.3–29.5 MHz	Phone, image	(1), (2), and (10).
10 m	28.5–29.0 MHz	Phone, image	(1), (2).
10 m	29.0–29.7 MHz	Phone, image	(1).
VHF:			
6 m	50.1–51.0 MHz	MCW, phone, image, RTTY, data	(2), (5).
6 m	51.0–54.0 MHz	MCW, phone, image, RTTY, data, test	(2), (5), and (8).
2 m	144.1–148.0 MHz	MCW, phone, image, RTTY, data, test	(2), (5), and (8).
1.25 m	Entire band	MCW, phone, image, RTTY, data, test	(2), (5), and (8).
70 m	Entire band	MCW, phone, image, RTTY, data, test	(6), (8).
33 m	Entire band	MCW, phone, image, RTTY, data, test, pulse	(7), (8), and (12).
23 m	Entire band	MCW, phone, image, RTTY, data, SS, test	(7), (8), and (12).
13 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
SHF:			
9 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
5 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
3 m	Entire band	MCW, phone, image, RTTY, data, SS, test	(7), (8), and (12).
1.2 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
EHF:			
6 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
4 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
2.5 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
2 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
1 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
—	Above 300 GHz	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).

§ 97.307 Emission standards.

(a) No amateur station transmission shall occupy more bandwidth than necessary for the information rate and emission type being transmitted, in accordance with good amateur practice.

(b) Emissions resulting from modulation must be confined to the band or segment available to the control operator. Emissions outside the necessary bandwidth must not cause splatter or keyclick interference to operations on adjacent frequencies.

(c) All spurious emissions from a station transmitter must be reduced to the greatest extent practicable. If any spurious emission, including chassis or power line radiation, causes harmful interference to the reception of another radio station, the licensee of the interfering amateur station is required to take steps to eliminate the interference, in accordance with good engineering practice.

(d) The mean power of any spurious emission from a station transmitter or external RF power amplifier transmitting on a frequency below 30 MHz must not exceed 50 mW and must be at least 40 dB below the mean power of the fundamental emission. For a transmitter of mean power less than 5 W, the attenuation must be at least 30 dB. A transmitter built before April 15, 1977, or first marketed before January 1, 1978, is exempt from this requirement.

(e) The mean power of any spurious emission from a station transmitter or external RF power amplifier transmitting on a frequency between 30–225 MHz must be at least 60 dB below the mean power of the fundamental. For a transmitter having a mean power of 25 W or less, the mean power of any spurious emission supplied to the antenna transmission line must not exceed 25 μW and must be at least 40 dB below the mean power of the fundamental emission, but need not be reduced below the power of 10 μW. A transmitter built before April 15, 1977, or first marketed before January 1, 1978, is exempt from this requirement.

(f) The following standards and limitations apply to transmissions on the frequencies specified in § 97.305(c) of this Part.

(1) No angle-modulated emission may have a modulation index greater than 1 at the highest modulation frequency.

(2) No non-phone emission shall exceed the bandwidth of a communications quality phone emission of the same modulation type. The total bandwidth of an independent sideband emission (having B as the first symbol), or a multiplexed image and phone emission, shall not exceed that of a communications quality A3E emission.

(3) Only a RTTY or date emission using a specified digital code listed in § 97.309(a) of this Part may be transmitted. The symbol rate must not exceed 300 bauds, or for frequency-shift keying, the frequency shift between mark and space must not exceed 1 kHz.

(4) Only a RTTY or data emission using a specified digital code listed in § 97.309(a) of this Part may be transmitted. The symbol rate must not exceed 1200 bauds, or for frequency-shift keying, the frequency shift between mark and space must not exceed 1 kHz.

(5) A RTTY, data or multiplexed emission using a specified digital code listed in § 97.309(a) of this Part may be transmitted. The symbol rate must not exceed 19.6 kilobauds. For frequency-shift keying, the frequency shift between mark and space must not exceed 1 kHz. A RTTY, data or multiplexed emission using an unspecified digital code under the limitations listed in § 97.309(b) of this Part also may be transmitted. The authorized bandwidth is 20 kHz.

(6) A RTTY, data or multiplexed emission using a specified digital code listed in § 97.309(a) of this Part may be transmitted. The symbol rate must not exceed 56 kilobauds. For frequency-shift keying, the frequency shift between mark and space must not exceed 1 kHz. A RTTY, data or multiplexed emission using an unspecified digital code under the limitations listed in § 97.309(b) of this Part also may be transmitted. The authorized bandwidth is 100 kHz.

(7) A RTTY, data or multiplexed emission using a specified digital code listed in § 97.309(a) of this Part or an unspecified digital code under the limitations listed in § 97.309(b) of this Part may be transmitted.

(8) A RTTY or data emission having designators with A, B, C, D, E, F, G, H, J or R as the first symbol; 1, 2, 7 or 9 as the second symbol; and D or W as the third symbol is also authorized.

(9) A station having a control operator holding a Novice or Technician Class operator license may only transmit a CW emission using the international Morse code.

(10) A station having a control operator holding a Novice or Technician Class operator license may only transmit a CW emission using the international Morse code or phone emissions J3E and R3E.

(11) Phone and image emissions may be transmitted only by stations located in ITU Regions 1 and 3, and by stations located within ITU Region 2 that are west of 130° West longitude or south of 20° North latitude.

(12) Emission F8E may be transmitted.

§ 97.309 RTTY and digital emission codes.

(a) Where authorized by §§ 97.305(c) and 97.307(f) of this Part, an amateur station may transmit a RTTY or data emission using the following specified digital codes:

(1) The 5-unit, start-stop, International Telegraph Alphabet No. 2, code defined in International Telegraph and Telephone Consultative Committee Recommendation F.1, Division C, and extensions as provided for in CCITT Recommendation T.61 (Malaga-Torremolinos, 1984).

(2) The 7-unit code specified in International Radio Consultative Committee Recommendation CCIR 476–1 (1978) 476–3 (1982), 476–4 (1986) or 625 (1986).

(3) The 7-unit code defined in American National Standards Institute X3.4–1977 or International Alphabet No. 5 as defined in International Telegraph and Telephone Consultative Committee Recommendation T.50 or in International Organization for Standardization, International Standard ISO 646 (1983).

(b) Where authorized by §§ 97.305(c) and 97.307(f) of this Part, a station may transmit a RTTY or data emission using an unspecified digital code, except to a station in a country with which the United States does not have an agreement permitting the code to be used. RTTY and data emissions using unspecified digital codes must not be transmitted for the purpose of obscuring the meaning of any communication. When deemed necessary by an EIC to assure compliance with the FCC Rules, a station must:

(1) Cease the transmission using the unspecified digital code;

(2) Restrict transmissions of any digital code to the extent instructed;

(3) Maintain a record, convertible to the original information, of all digital communications transmitted.

§ 97.311 SS emission types.

(a) SS emission transmissions by an amateur station are authorized only for communications between points within areas where the amateur service is regulated by the FCC. SS emission transmissions must not be used for the purpose of obscuring the meaning of any communication.

(b) Stations transmitting SS emission must not cause harmful interference to stations employing other authorized emissions, and must accept all interference caused by stations employing other authorized emissions. For the purposes of this paragraph, unintended triggering of carrier operated repeaters is not considered to be harmful interference.

(c) Only the following types of SS emission transmissions are authorized (hybrid SS emissions transmissions involving both spreading techniques are prohibited):

(1) Frequency hopping where the carrier of the transmitted signal is modulated with unciphered information and changes frequency at fixed intervals under the direction of a high speed code sequence.

(2) Direct sequence where the information is modulo–2 added to a high speed code sequence. The combined information and code are then used to modulate the RF carrier. The high speed code sequence dominates the modulation function, and is the direct cause of the wide spreading of the transmitted signal.

(d) The only spreading sequences that are authorized are from the output of one binary linear feedback shift register (which may be implemented in hardware or software).

(1) Only the following sets of connections may be used:

Number of stages in shift register	Taps used in feedback
7	7,1.
13	13,4, 3, and 1.
19	19, 5, 2, and 1.

(2) The shift register must not be reset other than by its feedback during an individual transmission. The shift register output sequence must be used without alteration.

(3) The output of the last stage of the binary linear feedback shift register must be used as follows:

(i) For frequency hopping transmissions using x frequencies, n consecutive bits from the shift register must be used to select the next frequency from a list of frequencies sorted in ascending order. Each consecutive frequency must be selected by a consecutive block of n bits. (Where n is the smallest integer greater than $\log_2 x$.)

(ii) For direct sequence transmissions using m-ary modulation, consecutive blocks of $\log_2 m$ bits from the shift register must be used to select the transmitted signal during each interval.

(e) The station records must document all SS emission transmissions and must

be retained for a period of 1 year following the last entry. The station records must include sufficient information to enable the FCC, using the information contained therein, to demodulate all transmissions. The station records must contain at least the following:

(1) A technical description of the transmitted signal;

(2) Pertinent parameters describing the transmitted signal including the frequency or frequencies of operation and, where applicable, the chip rate, the code rate, the spreading function, the transmission protocol(s) including the method of achieving sychronization, and the modulation type;

(3) A general description of the type of information being conveyed, (voice, text, memory dump, facsimile, television, etc.);

(4) The method and, if applicable, the frequency or frequencies used for station identification; and

(5) The date of beginning and the date of ending use of each type of transmitted signal.

(f) When deemed necessary by an EIC to assure compliance with this Part, a station licensee must:

(1) Cease SS emission transmissions;

(2) Restrict SS emission transmissions to the extent instructed; and

(3) Maintain a record, convertible to the original information (voice, text, image, etc.) of all spread spectrum communications transmitted.

(g) The transmitter power must not exceed 100 W.

§ 97.313 Transmitter power standards.

(a) An amateur station must use the minimum transmitter power necessary to carry out the desired communications.

(b) No station may transmit with a transmitter power exceeding 1.5 kW PEP. Until June 2, 1990, a station transmitting emission A3E is exempt from this requirement provided the power input (both RF and direct current) to the final amplifying stage supplying RF power to the antenna feed line does not exceed 1 kW, exclusive of power for heating the cathodes of vacuum tubes.

(c) No station may transmit with a transmitter power exceeding 200 W PEP on:

(1) The 3.70–3.75 MHz, 7.10–7.15 MHz, 10.10–10.15 MHz and 21.1–21.2 MHz segments;

(2) The 28.1–28.5 MHz segment when the control operator is a Novice or Technician operator; or

(3) The 7.050–7.075 MHz segment when the station is within ITU Regions 1 or 3.

(d) No station may transmit with a transmitter power exceeding 25 W PEP on the VHF 1.25 m band when the control operator is a Novice operator.

(e) No station may transmit with a transmitter power exceeding 5 W PEP on the UHF 23 cm band when the control operator is a Novice operator.

(f) No station may transmit with a transmitter power exceeding 50 W PEP on the UHF 70 cm band from an area specified in footnote US7 to § 2.106 of the FCC Rules, unless expressly authorized by the FCC after mutual agreement, on a case-by-case basis, between the EIC of the applicable field facility and the military area frequency coordinator at the applicable military base. An Earth station or telecommand station, however, may transmit on the 435–438 MHz segment with a maximum of 611 W effective radiated power (1 kW equivalent isotropically radiated power) without the authorization otherwise required. The transmitting antenna elevation angle between the lower half-power (−3 dB relative to the peak or antenna bore sight) point and the horizon must always be greater than 10°.

(g) No station may transmit with a transmitter power exceeding 50 W PEP on the 33 cm band from within 241 km of the boundaries of the White Sands Missile Range. Its boundaries are those portions of Texas and New Mexico bounded on the south by latitude 31° 41′ North, on the east by longitude 104° 11′ West, on the north by latitude 34° 30′ North, and on the west by longitude 107° 30′ West.

§ 97.315 Type acceptance of external RF power amplifiers.

(a) No more than 1 unit of 1 model of an external RF power amplifier capable of operation below 144 MHz may be constructed or modified during any calendar year by an amateur operator for use at a station without a grant of type acceptance. No amplifier capable of operation below 144 HMz may be constructed or modified by a non-amateur operator without a grant of type acceptance from the FCC.

(b) Any external RF power amplifier or external RF power amplifier kit (see § 2.815 of the FCC Rules), manufactured, imported or modified for use in a station or attached at any station must be type accepted for use in the amateur service in accordance with Subpart J of Part 2 of the FCC Rules. This requirement does not apply if one or more of the following conditions are met:

(1) The amplifier is not capable of operation on frequencies below 144 HMz. For the purpose of this part, an amplifier will be deemed to be incapable of operation below 144 HMz if it is not capable of being easily modified to increase its amplification characteristics below 120 MHz and either:

(i) The mean output power of the amplifier decreases, as frequency decreases from 144 HMz, to a point where 0 dB or less gain is exhibited at 120 MHz; or

(ii) The amplifier is not capable of amplifying signals below 120 MHz even for brief periods without sustaining permanent damage to its amplification circuitry.

(2) The amplifier was manufactured before April 28, 1978, and has been issued a marketing waiver by the FCC, or the amplifier was purchased before April 28, 1978, by an amateur operator for use at that amateur operator's station.

(3) The amplifier was:

(i) Constructed by the licensee, not from an external RF power amplifier kit, for use at the licensee's station; or

(ii) Modified by the licensee for use at the licensee's station.

(4) The amplifier is sold by an amateur operator to another amateur operator or to a dealer.

(5) The amplifier is purchased in used condition by an equipment dealer from an amateur operator and the amplifier is further sold to another amateur operator for use at that operator's station.

(c) A list of type accepted equipment may be inspected at FCC headquarters in Washington, DC, or at any FCC field location. Any external RF power amplifier appearing on this list as type accepted for use in the amateur service may be marketed for use in the amateur service.

§ 97.317 Standards for type acceptance of external RF power amplifiers.

(a) To receive a grant of type acceptance, the amplifier must satisfy the spurious emission standards of § 97.307(d) or (e) of this Part, as applicable, when the amplifier is:

(1) Operated at its full output power;

(2) Placed in the "standby" or "off" positions, but still connected to the transmitter; and

(3) Driven with at least 50 W mean RF input power (unless higher drive level is specified.)

(b) To receive a grant of type acceptance, the amplifier must not be capable of operation on any frequency or frequencies between 24 MHz and 35 MHz. The amplifier will be deemed incapable of such operation if it:

(1) Exhibits no more than 6 dB gain between 24 MHz and 26 MHz and between 28 MHz and 35 MHz. (This gain will be determined by the ratio of the

input RF driving signal (mean power measurement) to the mean RF output power of the amplifier); and

(2) Exhibits no amplification (0 dB gain) between 26 MHz and 28 MHz.

(c) Type acceptance may be denied when denial would prevent the use of these amplifiers in services other than the amateur service. The following features will result in dismissal or denial of an application for type acceptance:

(1) Any accessible wiring which, when altered, would permit operation of the amplifier in a manner contrary to the FCC Rules;

(2) Circuit boards or similar circuitry to facilitate the addition of components to change the amplifier's operating characteristics in a manner contrary to the FCC Rules;

(3) Instructions for operation or modification of the amplifier in a manner contrary to FCC Rules;

(4) Any internal or external controls or adjustments to facilitate operation of the amplifier in a manner contrary to the FCC Rules;

(5) Any internal RF sensing circuitry or any external switch, the purpose of which is to place the amplifier in the transmit mode;

(6) The incorporation of more gain in the amplifier than is necessary to operate in the amateur service; for purposes of this paragraph, the amplifer must:

(i) Not be capable of achieving designed output power when driven with less than 40 W mean RF input power;

(ii) Not be capable of amplifying the input RF driving signal by more than 15 dB, unless the amplifier has a designed transmitter power of less than 1.5 kW (in such a case, gain must be reduced by the same number of dB as the transmitter power relationship to 1.5 kW; This gain limitation is determined by the ratio of the input RF driving signal to the RF output power of the amplifier where both signals are expressed in peak envelope power or mean power);

(iii) Not exhibit more gain than permitted by paragraph (c)(6)(ii) of this Section when driven by an RF input signal of less than 50 W mean power; and

(iv) Be capable of sustained operation at its designed power level;

(7) Any attenuation in the input of the amplifier which, when removed or modified, would permit the amplifier to function at its designed transmitter power when driven by an RF frequency input signal of less than 50 W mean power; or

(8) Any other features designed to facilitate operation in a telecommunication service other than the Amateur Radio Services, such as the Citizens Band (CB) Radio Service.

Subpart E—Providing Emergency Communications

§ 97.401 Operation during a disaster.

(a) When normal communication systems are overloaded, damaged or disrupted because a disaster has occurred, or is likely to occur, in an area where the amateur service is regulated by the FCC, an amateur station may make transmissions necessary to meet essential communication needs and facilitate relief actions.

(b) When normal communication systems are overloaded, damaged or disrupted because a natural disaster has occurred, or is likely to occur, in an area where the amateur service is not regulated by the FCC, a station assisting in meeting essential communication needs and facilitating relief actions may do so only in accord with ITU Resolution No. 640 (Geneva, 1979). The 80 m, 75 m, 40 m, 30 m, 20 m, 17 m, 15 m, 12 m, and 2 m bands may be used for these purposes.

(c) When a disaster disrupts normal communication systems in a particular area, the FCC may declare a temporary state of communication emergency. The declaration will set forth any special conditions and special rules to be observed by stations during the communication emergency. A request for a declaration of a temporary state of emergency should be directed to the EIC in the area concerned.

(d) A station in, or within 92.6 km of, Alaska may transmit emissions J3E and R3E on the channel at 5.1675 Mhz for emergency communications. The channel must be shared with stations licensed in the Alaska-private fixed service. The transmitter power must not exceed 150 W.

§ 97.403 Safety of life and protection of property.

No provision of these rules prevents the use by an amateur station of any means of radiocommunication at its disposal to provide essential communication needs in connection with the immediate safety of human life and immediate protection of property when normal communication systems are not available.

§ 97.405 Station in distress.

(a) No provision of these rules prevents the use by an amateur station in distress of any means at its disposal to attract attention, make known its condition and location, and obtain assistance.

(b) No provision of these rules prevents the use by a station, in the exceptional circumstances described in paragraph (a) of this section, of any means of radiocommunications at its disposal to assist a station in distress.

§ 97.407 Radio amateur civil emergency service.

(a) No station may transmit in RACES unless it is an FCC-licensed primary, club, or military recreation station and it is certified by a civil defense organization as registered with that organization, or it is an FCC-licensed RACES station. No person may be the control operator of a RACES station, or may be the control operator of an amateur station transmitting in RACES unless that person holds a FCC-issued amateur operator license and is certified by a civil defense organization as enrolled in that organization.

(b) The frequency bands and segments and emissions authorized to the control operator are available to stations transmitting communications in RACES on a shared basis with the amateur service. In the event of an emergency which necessitates the invoking of the President's War Emergency Powers under the provisions of Section 706 of the Communications Act of 1934, as amended, 47 U.S.C. 606, RACES stations and amateur stations participating in RACES may only transmit on the following frequencies:

(1) The 1800–1825 kHz, 1975–2000 kHz, 3.50–3.55 MHz, 3.93–3.98 MHz, 3.984–4.000 MHz, 7.079–7.125 MHz, 7.245–7.255 MHz, 10.10–10.15 MHz, 14.047–14.053 MHz, 14.22–14.23 MHz, 14.331–14.350 MHz, 21.047–21.053 MHz, 21.228–21.267 MHz, 28.55–28.75 MHz, 29.237–29.273 MHz, 29.45–29.65 MHz, 50.35–50.75 MHz, 52–54 MHz, 144.50–145.71 MHz, 146–148 MHz, 2390–2450 MHz segments;

(2) The 1.25 m, 70 cm and 23 cm bands; and

(3) The channels at 3.997 MHz and 53.30 MHz may be used in emergency areas when required to make initial contact with a military unit and for communications with military stations on matters requiring coordination.

(c) A RACES station may only communicate with:

(1) Another RACES station;

(2) An amateur station registered with a civil defense organization;

(3) A United States Government station authorized by the responsible agency to communicate with RACES stations;

(4) A station in a service regulated by the FCC whenever such communication is authorized by the FCC.

(d) An amateur station registered with a civil defense organization may only communicate with:

(1) A RACES station licensed to the civil defense organization with which the amateur station is registered;

(2) The following stations upon authorization of the responsible civil defense official for the organization with which the amateur station is registered:

(i) A RACES station licensed to another civil defense organization;

(ii) An amateur station registered with the same or another civil defense organization;

(iii) A United States Government station authorized by the responsible agency to communicate with RACES stations; and

(iv) A station in a service regulated by the FCC whenever such communication is authorized by the FCC.

(e) All communications transmitted in RACES must be specifically authorized by the civil defense organization for the area served. Only civil defense communications of the following types may be transmitted:

(1) Messages concerning impending or actual conditions jeopardizing the public safety, or affecting the national defense or security during periods of local, regional, or national civil emergencies;

(2) Messages directly concerning the immediate safety of life of individuals, the immediate protection of property, maintenance of law and order, alleviation of human suffering and need, and the combating of armed attack or sabotage;

(3) Messages directly concerning the accumulation and dissemination of public information or instructions to the civilian population essential to the activities of the civil defense organization or other authorized governmental or relief agencies; and

(4) Communications for RACES training drills and tests necessary to ensure the establishment and maintenance of orderly and efficient operation of the RACES as ordered by the responsible civil defense organization served. Such drills and tests may not exceed a total time of 1 hour per week. With the approval of the chief officer for emergency planning in the applicable State, Commonwealth, District or territory, however, such tests and drills may be conducted for a period not to exceed 72 hours no more than twice in any calendar year.

Subpart F—Qualifying Examination Systems

§ 97.501 Qualifying for an amateur operator license.

An applicant must successfully pass an examination for the issuance of a new amateur operator license and for each change in operator class. Each applicant for the class of operator license specified below must pass, or otherwise receive examination credit for, the following examination elements:

(a) Amateur Extra Class operator: Elements 1(C), 2, 3(A), 3(B), 4(A), and 4(B);

(b) Advanced Class operator: Elements 1(B) or 1(C), 2, 3(A), 3(B), and 4(A);

(c) General Class operator: Elements 1(B) or 1(C), 2, 3(A), and 3(B);

(d) Technician Class operator: Elements 1(A) or 1(B) or 1(C), 2, and 3(A);

(e) Novice Class operator: Elements 1(A) or 1(B) or 1(C), and 2.

§ 97.503 Element standards.

(a) A telegraphy examination must be sufficient to prove that the examinee has the ability to send correctly by hand and to receive correctly by ear texts in the international Morse code at not less than the prescribed speed, using all the letters of the alphabet, numerals 0–9, period, comma, question mark, slant mark and prosigns ar, bt, and sk.

(1) Element 1(A): 5 words per minute;

(2) Element 1(B): 13 words per minute;

(3) Element 1(C): 20 words per minute.

(b) A written examination must be such as to prove that the examinee possesses the operational and technical qualifications required to perform properly the duties of an amateur service licensee. Each written examination must be comprised of a question set as follows:

(1) Element 2: 30 questions concerning the privileges of a Novice Class operator license. The minimum passing score is 22 questions answered correctly.

(2) Element 3(A): 25 questions concerning the additional privileges of a Technician Class operator license. The minimum passing score is 19 questions answered correctly.

(3) Element 3(B): 25 questions concerning the additional privileges of a General Class operator license. The minimum passing score is 19 questions answered correctly.

(4) Element 4(A): 50 questions concerning the additional privileges of an Advanced Class operator license. The minimum passing score is 37 questions answered correctly.

(5) Element 4(B): 40 questions concerning the additional privileges of an Amateur Extra Class operator license. The minimum passing score is 30 questions answered correctly.

(c) The topics and number of questions required in each question set are listed below for the appropriate examination element:

Topics	Element: 2	3(A)	3(B)	4(A)	4(B)
(1) FCC rules for the amateur radio services	10	5	4	6	8
(2) Amateur station operating procedures	2	3	3	1	4
(3) Radio wave propagation characteristics of amateur service frequency bands	1	3	3	2	2
(4) Amateur radio practices	4	4	5	4	4
(5) Electrical principles as applied to amateur station equipment	4	2	2	10	6
(6) Amateur station equipment circuit components	2	2	1	6	4
(7) Practical circuits employed in amateur station equipment	2	1	1	10	4
(8) Signals and emissions transmitted by amateur stations	2	2	2	6	4
(9) Amateur station antennas and feed lines	3	3	4	5	4

§ 97.505 Element credit.

(a) The administering VEs must give credit as specified below to an examinee holding any of the following documents:

(1) An unexpired (or within the grace period) FCC-issued amateur operator license: The least elements required for the license held. For a Technician Class operator license issued before March 21, 1987, credit must also be given for Element 3(B).

(2) A CSCE: Each element the CSCE indicates the examinee passed within the previous 365 days.

(3) A photocopy of a FCC Form 610 which was submitted to the FCC indicating the examinee qualified for a Novice Class operator license within the previous 365 days: Elements 1(A) and 2.

(4) An unexpired (or expired less than 5 years) FCC-issued commercial

radiotelegraph operator license or permit: Element 1(C).

(b) No examination credit, except as herein provided, shall be allowed on the basis of holding or having held any other license.

§ 97.507 Preparing an examination.

(a) Each telegraphy message and each written question set administered to an examinee must be prepared by a VE holding an FCC-issued Amateur Extra Class operator license. A telegraphy message or written question set, however, may also be prepared for the following elements by a VE holding an FCC-issued operator license of the Class indicated:

(1) Element 3(B): Advanced Class operator.

(2) Elements 1(A) and 3(A): Advanced or General Class operator.

(3) Element 2: Advanced, General or Technician Class operator.

(b) Each question set administered to an examinee must utilize questions taken from the applicable question pool.

(c) Each telegraphy message and each written question set administered to an examinee for a Technician, General, Advanced, or Amateur Extra Class operator license must be prepared, or obtained from a supplier, by the administering VEs according to instructions from the coordinating VEC.

(d) The preparation of each telegraphy message and each written question set administered to an examinee for a Novice Class operator license is the responsibility of the administering VEs. The telegraphy message and written question set may be obtained by the administering VEs from a supplier.

(e) A telegraphy examination must consist of a message sent in the international Morse code at no less than the prescribed speed for a minimum of 5 minutes. The message must contain each required telegraphy character at least once. No message known to the examinee may be administered in a telegraphy examination. Each 5 letters of the alphabet must be counted as 1 word. Each numeral, punctuation mark and prosign must be counted as 2 letters of the alphabet.

§ 97.509 Administering an examination.

(a) Each examination for an amateur operator license must be administered at a location and a time specified by the administering VEs. Each administering VE must be present and observe the examinee throughout the entire examination. The administering VEs are responsible for the proper conduct and necessary supervision of each examination. The administering VEs must immediately terminate the examination upon failure of the examinee to comply with their instructions.

(b) Each examinee must comply with the instructions given by the administering VEs.

(c) No examination that has been compromised shall be administered to any examinee. Neither the same telegraphy message nor the same question set may be readministered to the same examinee.

(d) Passing a telegraphy receiving examination is adequate proof of an examinee's ability to both send and receive telegraphy. The administering VEs, however, may also include a sending segment in a telegraphy examination.

(e) Upon completion of each examination element, the administering VEs must immediately grade the examinee's answers. The administering VEs are responsible for determining the correctness of the examinee's answers.

(f) When the examinee is credited for all examination elements required for the operator license sought, the administering VEs must certify on the examinee's application form that the applicant is qualified for the license and report the basis for the qualification.

(g) When the examinee does not score a passing grade on an examination element, the administering VEs must return the application form to the examinee and inform the examinee of the grade.

(h) The administering VEs must accommodate an examinee whose physical disabilities require a special examination procedure. The administering VEs may require a physician's certification indicating the nature of the disability before determining which, if any, special procedures must be used.

(i) The FCC may:

(1) Administer any examination element itself;

(2) Readminister any examination element previously administered by VEs, either itself or under the supervision of VEs designated by the FCC; or

(3) Cancel the operator and station licenses of any licensee who fails to appear for readministration of an examination when directed by the FCC, or who does not successfully complete any required element which is readministered. In an instance of such cancellation, the person will be issued operator and station licenses consistent with completed examination elements that have not been invalidated by not appearing for, or by failing, the examination upon readministration.

§ 97.511 Technician, General, Advanced and Amateur Extra Class operator license examination.

(a) Each session where an examination for a Technician, General, Advanced or Amateur Extra Class operator license is administered must be coordinated by a VEC. Each administering VE must be accredited by the coordinating VEC.

(b) Each examination for a Technician Class operator license must be administered by 3 administering VEs, each of whom must hold an FCC-issued Amateur Extra or Advanced Class operator license.

(c) Each examination for a General, Advanced or Amateur Extra Class operator license must be administered by 3 administering VEs, each of whom must hold an FCC-issued Amateur Extra Class operator license.

(d) The administering VEs must make a public announcement before administering an examination for Technician, General, Advanced or Amateur Extra Class operator license. The number of candidates at any examination may be limited.

(e) The administering VEs must issue a CSCE to an examinee who scores a passing grade on an examination element.

(f) Within 10 days of the administration of a successful examination for the Technician, General, Advanced or Amateur Extra Class operator license, the administering VEs must submit the application to the coordinating VEC.

§ 97.513 Novice Class operator license examination.

(a) Each examination for a Novice Class operator license must be administered by 2 VEs. The VEs do not have to be accredited by a VEC. Each administering VE must hold a current FCC-issued Amateur Extra, Advanced or General Class operator license.

(b) Within 10 days of the administration of a successful examination for a Novice Class operator license, the administering VEs must submit the application to: FCC, P.O. Box 1020, Gettysburg, PA 17326.

§ 97.515 Volunteer examiner requirements.

(a) Each administering VE must be at least 18 years of age.

(b) Any person who owns a significant interest in, or is an employee of, any company or other entity that is engaged in the manufacture or distribution of equipment used in connection with amateur station

transmissions, or in the preparation or distribution of any publication used in preparation for obtaining amateur licenses, is ineligible to be an administering VE. An employee who does not normally communicate with that part of an entity engaged in the manufacture or distribution of such equipment, or in the preparation or distribution of any publication used in preparation for obtaining amateur operator licenses, is eligible to be an administering VE.

(c) No person may be a VE if that person's amateur station license or amateur operator license has ever been revoked or suspended.

(d) No VE may administer an examination to that VE's spouse, children, grandchildren, stepchildren, parents, grandparents, stepparents, brothers, sisters, stepbrothers, stepsisters, aunts uncles, nieces, nephews, and in-laws.

§ 97.517 Volunteer examiner conduct.

No VE may administer or certify any examination by fraudulent means or for monetary or other consideration including reimbursement in any amount in excess of that permitted. Violation of this provision may result in the revocation of the VE's amateur station license and the suspension of the VE's amateur operator license.

§ 97.519 Coordinating examination sessions.

(a) A VEC must coordinate the efforts of VEs in preparing and administering examinations.

(b) At the completion of each examination session coordinated, the coordinating VEC must collect the applications and test results from the administering VEs. The coordinating VEC must screen and forward all applications for qualified examinees within 10 days of their receipt from the administering VEs to: FCC P.O. Box 1020, Gettysburg, PA 17326.

(c) Each VEC must make any examination records available to the FCC, upon request

§ 97.521 VEC qualifications.

No organization may serve as a VEC unless it has entered into a written agreement with the FCC. The VEC must abide by the terms of the agreement. In order to be eligible to be a VEC, the entity must:

(a) Be an organization that exists for the purpose of furthering the amateur service;

(b) Be capable of serving as a VEC in at least the VEC region (see Appendix 2) proposed;

(c) Agree to coordinate examinations for Technician, General, Advanced, and Amateur Extra Class operator licenses;

(d) Agree to assure that, for any examination, every examinee qualified under these rules is registered without regard to race, sex, religion, national origin or membership (or lack thereof) in any amateur service organization;

(e) Not be engaged in the manufacture or distribution of equipment used in connection with amateur station transmissions, or in the preparation or distribution of any publication used in preparation for obtaining amateur licenses, unless a persuasive showing is made to the FCC that preventive measures have been taken to preclude any possible conflict of interest.

§ 97.523 Question pools.

All VECs must cooperate in maintaining one question pool for each written examination element. Each question pool must contain at least 10 times the number of questions required for a single examination. Each question pool must be published and made available to the public prior to its use for making a question set. Each question on each VEC question pool must be prepared by a VE holding the required FCC-issued operator license. See § 97.507(a) of this Part.

§ 97.525 Accrediting VEs.

(a) No VEC may accredit a person as a VE if:

(1) The person does not meet minimum VE statutory qualifications or minimum qualifications as prescribed by this Part;

(2) The FCC does not accept the voluntary and uncompensated services of the person;

(3) The VEC determines that the person is not competent to perform the VE functions; or

(4) The VEC determines that questions of the person's integrity or honesty could compromise the examinations.

(b) Each VEC must seek a broad representation of amateur operators to be VEs. No VEC may discriminate in accrediting VEs on the basis of race, sex, religion or national origin; nor on the basis of membership (or lack thereof) in an amateur service organization; nor on the basis of the person accepting or declining to accept reimbursement.

§ 97.527 Reimbursement for expenses.

(a) VEs and VECs may be reimbursed by examinees for out-of-pocket expenses incurred in preparing, processing, administering, or coodinating an examination for a Technician, General, Advanced, or Amateur Extra operator license.

(b) The maximum amount of reimbursement from any one examinee for any one examination at a particular session regardless of the number of examination elements taken must not exceed that announced by the FCC in a Public Notice. (The basis for the maximum fee is $4.00 for 1984, adjusted annually each January 1 thereafter for changes in the Department of Labor Consumer Price Index.)

(c) No reimbursement may be accepted by any VE for preparing, processing, or administering an examination for a Novice operator license.

(d) Each VE and each VEC accepting reimbursement must maintain records of out-of-pocket expenses and reimbursements for each examination session. Written certifications must be filed with the FCC each year that all expenses for the period from January 1 to December 31 of the preceding year for which reimbursement was obtained were necessarily and prudently incurred.

(e) The expense and reimbursement records must be retained by each VE and each VEC for 3 years and be made available to the FCC upon request.

(f) Each VE must forward the certification by January 15 of each year to the coordinating VEC for the examinations for which reimbursement was received. Each VEC must forward all such certifications and its own certification to the FCC on or before January 31 of each year.

(g) Each VEC must disaccredit any VE failing to provide the certification. The VEC must advise the FCC on January 31 of each year of any VE that it has disaccredited for this reason.

Appendix 1—Places Where the Amateur Service is Regulated by the FCC

In ITU Region 2, the amateur service is regulated by the FCC within the territorial limits of the 50 United States, District of Columbia, Caribbean Insular areas [Commonwealth of Puerto Rico, United States Virgin Islands (50 islets and cays) and Navassa Island], and Johnston Island (Islets East, Johnston, North and Sand) and Midway Island (Islets Eastern and Sand) in the Pacific Insular areas.

In ITU Region 3, the amateur service is regulated by the FCC within the Pacific Insular territorial limits of American Samoa (seven islands), Baker Island, Commonwealth of Northern Mariana Islands, Guam Island, Howland Island, Jarvis Island, Kingman Reef, Palmyra Island (more than 50 islets) and Wake Island (Islets Peale, Wake and Wilkes).

Appendix 2—VEC Regions

1. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.
2. New Jersey and New York.
3. Delaware, District of Columbia, Maryland and Pennsylvania.
4. Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee and Virginia.
5. Arkansas, Louisiana, Mississippi, New Mexico, Oklahoma and Texas.
6. California.
7. Arizona, Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming.
8. Michigan, Ohio and West Virginia.
9. Illinois, Indiana and Wisconsin.
10. Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota.
11. Alaska.
12. Caribbean Insular areas.
13. Hawaii and Pacific Insular areas.

[FR Doc. 89-14433 Filed 6-19-89; 8:45]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of reopening.

SUMMARY: NOAA announces the reopening of the ocean commercial salmon fishery in the exclusive economic zone (EEZ) from the Queets River, Washington, to Cape Falcon, Oregon, for three days on June 13–15, 1989. This fishery closed at midnight, June 8, 1989. Evaluation of landing data following closure of the fishery indicates that sufficient chinook salmon remain to allow three additional days of fishing. This action is intended to maximize the harvest of chinook salmon in this subarea without exceeding the ocean share of salmon allocated to the commercial fishery.

EFFECTIVE DATE: Reopening of the EEZ to commercial salmon fishing between the Queets River, Washington, and Cape Falcon, Oregon, is effective from 0001 hours local time June 13, 1989, through 2400 hours local time June 15, 1989. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989).

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate for and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(2):

"If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours."

Management measures for 1989 were effective on May 1, 1989 (54 FR 19798, May 8, 1989). The 1989 commercial fishery for all salmon except coho in the subarea from the Queets River, Washington, to Cape Falcon, Oregon, commenced on May 1, 1989, and closed at midnight, June 8, 1989, upon the projected attainment of a subarea quota of 39,500 chinook salmon. Subsequent evaluation of landing data indicates that this closure was based on an overestimate of actual catch.

According to the best available information, commercial catches through June 8 totaled 35,000 chinook salmon, leaving 4,500 chinook salmon available for harvest in the subarea chinook quota. This amount of available chinook salmon has been determined to be sufficient for three additional days of fishing. This action is being taken in as timely a manner as possible for all of the remaining original season, which would have ended no later than June 15, 1989. Reopening of the commercial fishery in this subarea is consistent with the management objectives for chinook salmon in this subarea. As in the original season (May 1–June 15) Conservation Zone 1, the Columbia River mouth, will be closed (54 FR 19798, May 8, 1989).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, June 13, 1989, by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz. NOAA issues this notice of the reopening of the commercial salmon fishery in the EEZ from the Queets River, Washington, to Cape Falcon, Oregon, which was effective at 0001 hours local time, June 13, 1989. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this reopening. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through June 30, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: June 14, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-14516 Filed 6-15-89; 8:45 am]

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Proposed Rules

Federal Register
Vol. 54, No. 117
Tuesday, June 20, 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.

RAILROAD RETIREMENT BOARD

20 CFR Parts 320 and 340

RIN 3220-AA77

Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals From Such Determinations; Recovery of Benefits

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations by adding two instances in which recoveries of overpayments of benefits under the Railroad Unemployment Insurance Act will not be subject to waiver, and to clarify certain procedures relating to the recovery of overpayments under that statute.

DATE: Comments must be received by the Secretary to the Board on or before July 20, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: Section 2(d) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 352(d)) provides that an overpayment of benefits under that Act may be waived if the overpaid individual was not at fault in causing the overpayment and recovery of the overpayment would be contrary to the purpose of the RUIA (financial hardship test) or would be against equity or good conscience.

On January 28, 1988, (53 FR 2485), the Board published regulations explaining how an overpaid individual may request waiver and how the Board applies waiver under the RUIA. 20 CFR Parts 320 and 340. Section 340.10(e) provides that an overpayment will not be waived when the recovery of the overpayment is sought from an individual other than the overpaid employee. The Board proposes to add two situations in which waiver also will not be available. Proposed § 340.10(e)(2) provides that where the overpayment is equal to or less than 10 times the current maximum daily benefit rate under the RUIA (presently $30) such an overpayment will not be waived even though the overpaid employee was not at fault in causing the overpayment. In such cases the overpaid employee is hard pressed to show that recovery of the overpayment, for example by installment payments, would cause him or her financial hardship or would be against equity or good conscience. The Board proposes that where the overpayment is equal to or less than 10 times the daily benefit rate that there be a conclusive presumption that it is not contrary to the purpose of the RUIA or against equity or good conscience to recover such payments. Consequently, in such an instance there will be no right to request waiver of the overpayment.

Proposed § 340.10(e)(3) provides that there shall be no waiver where the overpayment of RUIA benefits may be recovered from an accrual of a retroactive award of annuities under the Railroad Retirement Act (RRA). A sick or disabled railroad employee who is receiving benefits under the RUIA may eventually become entitled to a disability annuity under the RRA with the annuity commencing the day after the employee left railroad employment. In such an instance an overpayment of benefits under the RUIA is created since section 4(a-1)(ii) of the RUIA (45 U.S.C. 345(a-1)(ii)) prohibits the payment of benefits under that statute for any period in which the employee is also receiving benefits under the RRA. In such an instance the Board usually recovers the overpaid benefits under the RUIA from the accrual of benefits under the RRA. The Board proposes that where the overpayment of benefits under the RUIA may be recovered in such a manner there shall be no right to waiver by the overpaid employee. In such a case the employee cannot show that recovery of the overpayment will cause financial hardship since no future benefits are being taken away nor is he or she being asked to pay anything out-of-pocket. His or her accrual of benefits under the RRA is simply being reduced to recover the overpayment. Likewise, the employee can never show that it is against equity or good conscience to recover the overpayment in this manner, since the employee is hard pressed to argue on equitable grounds that he or she deserves a windfall by being permitted to receive benefits under both statutes for the same time period where the law prohibits such dual entitlement. Of course, in instances in which the overpayment is not entirely offset by the accrual, the employee would be able to request waiver of the remaining overpayment subject to the provisions of § 320.11.

Finally, the Board proposes to modify §§ 320.11 (a) and (b) to conform to the proposed revisions in § 340.10(e). In addition, the Board proposes to revise § 340.7 to make it clear that all overpayments, even those waived under this part, are still deducted from any residual lump sum death payment under the Railroad Retirement Act. Section 340.8 is proposed to be revised to clarify when recovery by actuarial adjustment is effective to recover an overpayment. Finally, § 340.10 is proposed to be revised by changing the word "and" in the phrase "equity and good conscience" to "or" to conform to the language in the RUIA.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory impact analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601-611). In addition, no requirements for the collection of information within the meaning of the Paperwork Reduction Act of 1980 are imposed.

List of Subjects in 20 CFR Parts 320 and 340

Railroad employees, Railroad unemployment insurance.

For reasons set out in the preamble, Title 20, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 320—INITIAL DETERMINATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND REVIEWS OF AND APPEALS FROM SUCH DETERMINATIONS

1. The authority citation for Part 320 is revised to read as follows:

Authority: 45 U.S.C. 362(l).

2. Section 320.11 is amended by revising paragraph (a) and by revising paragraph (b)(1) as follows:

§ 320.11 Request for waiver of recovery.

(a) *Time limitation.* If a claimant requests waiver of recovery of an erroneous payment, he or she shall be given an opportunity for a hearing on his or her request provided, however, that where an erroneous payment is not subject to waiver in accordance with section 340.10(e) of this chapter, no hearing will be held and recovery will not be stayed. The claimant shall have 30 days from the date of the notification of the erroneous payment determination in which to file a request for waiver and if he or she so desires, a request for a hearing. Such requests shall be made in writing and be filed by mail or in person at any Board office. If the claimant does not elect to have an oral hearing with respect to his or her request for waiver of recovery he or she may, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case.

(b) * * *

(1) The erroneous payment is not subject to waiver in accordance with § 340.10(e) of the Chapter;

* * * * *

PART 340—RECOVERY OF BENEFITS

3. The authority for Part 340 continues to read as follows:

Authority: 45 U.S.C. 362(l).

4. Section 340.7 is revised to read as follows:

§ 340.7 Deduction in computation of death benefit.

In computing the residual lump sum provided for in Part 234, Subpart D, of this chapter, the Board shall include in the benefits to be deducted from the gross residual all amounts recoverable under this part, but not recovered, including amounts where recovery was waived, that were paid to the individual or paid to others as benefits accrued to the individual but not paid at death.

5. Section 340.8 is revised to read as follows:

§ 340.8 Recovery by adjustment in connection with subsequent payments under the Railroad Retirement Act.

Recovery under this part may be made by permanently reducing the amount of any annuity payable to the overpaid individual (or an individual receiving an annuity based upon the same compensation record as that of the overpaid individual) under the Railroad Retirement Act. This method of recovery is called an actuarial adjustment of the annuity. The Board cannot require any individual to take an actuarial adjustment in order to recover an overpayment nor is an actuarial adjustment available as a matter of right. An actuarial adjustment does not become effective until the overpaid individual negotiates the first annuity check which reflects the annuity rate after actuarial adjustment.

Example. An individual agrees to recovery of a $5,000 overpayment made to him by actuarial adjustment to an annuity awarded him under the Railroad Retirement Act. However, he dies before negotiating the first annuity check reflecting his actuarially reduced rate. The $5,000 is not considered recovered.

6. Section 340.10 is amended by revising paragraphs (d) and (e) to read as follows:

§ 340.10 Waiver of recovery of erroneous payments.

* * * * *

(d) *When recovery is against equity or good conscience.* Recovery is considered to be against equity or good conscience when a person, in reliance on such payments or on notice that such payment would be made, relinquished a valuable right or changed his or her position for the worse.

(e) Recoveries not subject to waiver.

(1) Where an amount is recoverable pursuant to section 2(f) of the Act from remuneration payable to an employee by a person or company, or where a lien for reimbursement of sickness benefits has arisen pursuant to section 12(o) of the Act, and in either case recovery is sought from a person other than the employee, no right to waiver of recovery exists.

(2) Where the amount recoverable is equal to or less than 10 times the current maximum daily benefit rate under the Railroad Unemployment Insurance Act it shall not be considered contrary to the purpose of the Act or against equity or good conscience to recover such payment. Consequently, the amount recoverable is not subject to waiver under this part.

(3) Where the amount recoverable is the result of an overpayment of benefits payable under the Railroad Unemployment Insurance Act due to entitlement of annuities under the Railroad Retirement Act for the same days for which such benefits were payable, and recovery of such overpayment may be made by offset against an accrual of the annuities, it shall not be considered contrary to the purpose of the Act or against equity or good conscience to recover the erroneous payment by offset against such accrual. Consequently, the amount recoverable is not subject to waiver under this part.

Dated: June 12, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-14550 Filed 6-19-89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[PS-229-84]

RIN 1545-AH26

Treatment of Partnership Liabilities Allocations Attributable to Nonrecourse Liabilities;

AGENCY: Internal Revenue Service, Treasury.

ACTION: Extension of time for submitting comments and requests for a public hearing.

SUMMARY: This document provides notice of an extension of time for submitting comments and requests for a public hearing with respect to proposed regulations relating to the treatment of partnership liabilities and the allocation of deductions attributable to nonrecourse debt that were published in the **Federal Register** for Friday, December 30, 1988 (53 FR 53174). The regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The Internal Revenue Service anticipates issuing amendments to these regulations in the near future and this extension is necessary in order to allow taxpayers to comment on the regulations as amended. Therefore, the current dealine of June 28, 1989, is extended until a document is published in the **Federal Register** giving notification of a deadline.

DATES: The time for submission of comments and requests for a public hearing is extended until a document is published in the **Federal Register** giving notification of the deadline.

ADDRESSES: Send comments and requests for a public hearing to Commissioner of Internal Revenue, P.O. Box 7604, Ben Franklin Station, Attn: CC: CORP:T:R, (PS-229-84), Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mary Munday, 202-377-9470 (not a toll-free number).

SUPPLEMENTARY INFORMATION: By a cross-reference notice of proposed rulemaking to temporary regulations published in the **Federal Register** for Friday, December 30, 1988 (53 FR 53174), comments and requests for a public hearing with respect to the proposed rules were to be mailed or delivered by March 30, 1989. This date was later extended to June 28, 1989 (54 FR 12925, March 29, 1989). The time for submission of comments and requests for a public hearing is extended until a document is published in the Federal Register giving notification of the deadline.

Dale D. Goode,

Chief, Regulations Unit Associate Chief Counsel (Corporate).

[FR Doc. 89-14485 Filed 6-19-89; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-217-84]

RIN 1545-AH49

Golden Parachute Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the **Federal Register** publication for Friday, May 5, 1989, at 54 FR 19390 of the notice of proposed rulemaking. The proposed rules relate to golden parachute payments.

FOR FURTHER INFORMATION CONTACT: Stuart Wessler, (202) 566-6016, or Robert Misner, (202) 566-4752 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 280G of the Internal Revenue Code of 1986.

Need for Corrections

As published, the notice of proposed rulemaking contains omitted lines and typographical errors which may prove to be misleading and are in need of clarification.

Corrections

Accordingly, the publication of the proposed rule which was the subject of FR Doc. 89-10603, is corrected as follows:

§ 1.280G-1 [Corrected]

Paragraph 1. In § 1.280G-1, A-7 (e), page 19395, second column, Example (1), line four, the language ", who owns the remaining 24 percent." is added immediately following the language "an individual".

Par. 2. In § 1.280G-1, A-24 (e), page 19400, second column, Example (5), line thirteen, the mathematical calculation "$110,000 (1% × 22" is corrected to read "$115,000 (1% × 23".

Par. 3. In § 1.280G-1, A-24 (e), page 19400, second column, Example (5), line seventeen, the monetary figure "$203,162" is corrected to read "$208,162".

Par. 4. In § 1.280G-1, A-24 (e), page 19400, second column, Example (5), line eighteen, the monetary figure "$110,000" is corrected to read "$115,000".

Par. 5. In § 1.280G-1, A-24 (e), page 19400, second column, Example (6) (i), line seventeen, the language "period. On January 15, 1988, a change in the" is corrected to read "period. On January 15, 1989, a change in the".

Par. 6. In § 1.280G-1, A-24 (e), page 19400, second column, Example (6) (ii), line fifteen, the language "present value" is removed and the language "amount" is added in its place.

Par. 7. In § 1.280G-1, A-24 (e), page 19400, second column, Example (6) (ii), line twenty-three, the word "have" is added immediately following the language "value of the stock would".

Par. 8. In § 1.280G-1, A-24 (e), page 19400, second column, Example (6) (ii), second to the last line, the mathematical calculation "$110,000 (1% × 22 months" is corrected to read $115,000 (1% × 23 months".

Par. 9. In § 1.280G-1, A-24 (e), page 19400, third column, Example (7) (ii), line ten, the word "or" is corrected to read "on".

Par. 10. In § 1.280G-1, A-24 (e), page 19400, third column, Example (7) (ii), second to the last line, the mathematical calculation "$60,000 (1% × 10" is corrected to read $66,000 (1% × 11".

Par. 11. In § 1.280G-1, A-24 (e), page 19401, first column, Example (8) (ii), line five, the language "continue to" is added immediately after the language "reflecting the lapse of the obligation to".

Par. 12. In § 1.280G-1, A-24 (e), page 19401, first column, Example (8) (ii), second to the last line, the mathematical calculation "$20,000 (1% × 10 months" is corrected to read $22,000 (1% × 11 months".

Par. 13. In § 1.280G-1, A-27 (d), page 19402, second column, Example (4), lines seven and eight, the language "Corporation O" is removed and the language "Corporation Q" is added in its respective places.

Par. 14. In § 1.280G-1, A-32, page 19403, third column, line eleven, the language "determined. See Q/As 24 and 35." is removed and the language "determined. See Q/As 31 and 32." is added in its place.

Dale D. Goode,

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

[FR Doc. 89-14486 Filed 6-19-89; 8:45 am]

BILLING CODE 4830-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1401

Freedom of Information Reform Act; Revision of Fee Schedule and Fee Waiver Policy

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed rule.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS or the Agency) proposes to amend its Freedom of Information Act (FOIA) Regulations, 29 CFR 1401.36, pursuant to the Freedom of Information Reform Act provisions (Pub. L. 99-570, section 1803) regarding fees and fee waivers. As required by the Act, the Office of Management and Budget has issued guidelines (at 52 FR 10012, March 27, 1987) to which these proposed rules conform.

DATE: Comments on this proposed change must be received by August 31, 1989.

ADDRESS: Written comments should be submitted in duplicate to Ted M. Chaskelson, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Ted M. Chaskelson, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. Telephone: (202) 653-5305.

SUPPLEMENTARY INFORMATION: On October 27, 1986, the President signed the Freedom of Information Reform Act of 986 (Pub. L. 99-570). This legislation amended the Freedom of Information Act [FOIA] to provide broader exemption protection for law enforcement information, and modified the Act's fee and fee waiver provisions. The Reform Act required the Office of Management and Budget (OMB) to develop and issue guidelines, pursuant to notice and public comment, for fee

schedules and the processing of FOIA requests. The Act also required individual agencies to promulgate regulations, pursuant to notice and public comment, specifying fee schedules and procedures for waiving of reducing fees.

Pursuant to these directions, FMCS proposes to replace the current provisions appearing at 29 CFR 1401.36, with the text which appears below. None of the fee amounts shown in the current provisions at 29 CFR 1401.36 have been changed by this proposed revision; rather, the criteria for charging, reducing and waiving fees have been revised to conform to the Act and OMB guidance.

Executive Order 12291

This proposed rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) a significant decline in productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act Certification

The FMCS finds that this proposed rule will have no significant economic impact upon a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 605(g)), and will so certify to the Chief Counsel for Advocacy of the Small Business Administration. This conclusion has been reached because the proposed rule does not impose any significant economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 29 CFR Part 1401

Administrative practice and procedure, Labor management Relations, Freedom of Information Reform Act.

Accordingly, 29 CFR Part 1401 is amended as follows:

PART 1401—PUBLIC INFORMATION

1. The authority citation for Part 1401 is revised to read as follows:

Authority: Sec. 202, 61 Stat. 136, as amended; 5 U.S.C. 552.

2. Section 1401.36 is revised to read as follows:

§ 1401.36 Freedom of Information Reform Act Fee Schedules and Waivers.

(a) Definitions. For purposes of section 1401.36, the following definitions apply:

(1) "Direct costs" means those expenditures which are actually incurred in searching for and duplicating and, in the case of commercial use requesters, reviewing documents to respond to a FOIA request.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page and line-by-line identification of material within documents. Searches may be done manually or by computer.

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Copies may be in various forms including machine readable documentation (e.g. magnetic tape or disk) among others. The copy provided shall be in a form that is reasonably usuable by the requester.

(4) "Review" refers to the process of examining documents located, in response to a request that is for commercial use, to determine whether a document or any portion of any document located is permitted to be withheld. It includes processing any documents for disclosure to the requester, e.g. doing all that is necessary to excise them or otherwise prepare them for release.

(5) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial trade or profit interests of the requester or the person on whose behalf the request is made.

(6) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate or professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(7) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a reasonable expectation of publication through that organization, even though not actually employed by it.

(8) "Non-commercial scientific institution" refers to an institution that is not operated on a commercial basis as defined under "commercial use request" in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(b) Fee Schedules and Waivers. Requests submitted shall be subject to direct costs, including search, duplication and review, in accordance with the following schedules, procedures and conditions.

(1) Schedule of charge—(i) *Clerical time.* For each one-quarter hour or portion thereof of clerical time, $2.25.

(ii) *Professional time.* For each one-quarter hour of portion thereof of professional time, $7.00.

(iii) *Duplication.* For each sheet of duplication (not to exceed 8½ by 14 inches) of requested records, $.20.

(iv) *Computer time.* For computer time, $3.00 per minute of time expended for production programming, searching and production of any record. Computer time expressed in fractions of minutes will be rounded to the next whole minute.

(v) *Certification or authentication or records.* The fee per certification or authentication is $2.00.

(vi) *Forwarding material to destination.* Postage, insurance, and special fees will be charged on the basis of actual costs.

(vii) Other costs. All other direct costs of preparing a response to a request shall be charged to the requester in the same amount as incurred by the Agency. Charges may also be assessed for searches even if the records requested are not found, or the records are determined to be exempt from disclosure.

(2) *Rules of construction.* In providing the foregoing fee schedules pursuant to the provisions of 5 U.S.C. 552(4)(a), it is the intent of FMCS to apply 29 CFR Part 70 and the user charge statute, 31 U.S.C. 9701, to cover those situations where the Agency is performing for a requester services which are not required under the Freedom of Information Act.

(3) *Payment of fees.* Payments shall be made by check or money order payable to "Federal Mediation and Conciliation Service," and shall not be sent to Director, Financial Management Staff, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427.

(4) *Fee Categories.* Fees incurred in responding to requests shall be charged in accordance with the following categories of requesters:

(i) Commercial use requesters will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. This includes the full direct costs of computer production programming, searching and production of records. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents, as described below.

(ii) Educational and non-commercial scientific institution requesters will be assessed charges for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but are sought in furtherance of scolarly research.

(iii) Requesters who are representatives of the news media will be assessed charges for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (a)(7) of this section, and the request must not be made for commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use.

(iv) All other requesters will be assessed charges to recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, including costs of computer production programming, searching and production, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge.

(v) In no event shall fees be charged when the total charges are less than $50.00 which is the Agency cost of collecting and processing the fee itself.

(vi) If the Agency has reason to believe that a requester or several requesters whose interests are aligned are breaking up a request into several smaller requests for the purpose of avoiding the imposition of fees that would otherwise be charged, the Agency may, after notification, aggregate the requests and impose fees in accordance with this schedule of charges.

(vii) Documents are to be furnished without charge or at reduced levels if disclosure of the information is in the public interest; that is, because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(viii) If a requester fails to pay chargeable fees that were incurred as a result of this Agency's processing of the information request, the Agency beginning on the 31st day following the date on which the notification of charges was sent, may assess interest charges against the requester in the manner prescribed in 31 U.S.C. 3717.

(c) Advance Payment. (1) FMCS may require a requester to make an advance payment of anticipated fees under the following circumstances:

(i) If the anticipated charges are likely to exceed $250, FMCS shall notify the requester of the likely cost and obtain satisfactory assurance of full payment when the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(ii) If a requester has previously failed to pay fees that have been charged in processing a request, within 30 days of the date when the notification of fees was sent, the requester will be required to:

(A) Pay the entire amount of fees that are owed, plus any applicable interest as provided for in paragraph (b)(4)(viii) of this section, and

(B) To make an advance payment of the full amount of the estimated fee before the Agency will process the new pending request.

(2) The Agency may use the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 29 CFR Part 1450) including disclosure to consumer reporting agencies, for the purpose of obtaining payment.

Date: June 6, 1989.

Robert P. Baker,

Acting Director.

[FR Doc. 89–14547 Filed 6–19–89; 8:45 am]

BILLING CODE 6732-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 104

RIN 1219–AA04

Pattern of Violations; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule for criteria and procedures for identifying mines with a "pattern of violations" of mandatory standards.

DATE: Written comments on the proposed rule for pattern of violations must be received on or before August 31, 1989.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances; MSHA; Room 631, Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On May 30, 1989, (53 FR 23156) MSHA published a proposed safety standard that would identify mines with a "pattern of violations" of mandatory standards that significantly and substantially contribute to safety or health hazards. The proposed rule would implement section 104(e) of the Federal Mine Safety and Health Act of 1977. The comment period for the proposed rule was to remain open until July 31, 1989 (53 FR 23156), but in response to requests from the mining community, MSHA is extending the comment period to August 31, 1989. All interested parties are encouraged to submit comments prior to this date.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Date: June 14, 1989.

[FR Doc. 89–14558 Filed 6–19–89; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 81–059a]

RIN 2115–AB91

Licensing of Officers and Operators for Mobile Offshore Drilling Units

AGENCY: Coast Guard, DOT.

ACTION: Notice of extension of comment period.

SUMMARY: On May 17, 1989, the Coast Guard published a Supplemental Notice of Proposed Rulemaking regarding Licensing of Officers and Operators for Mobile Offshore Drilling Units (54 FR 21246). The comment period was to end

on June 16, 1989. This notice extends the comment period to July 31, 1989.

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

ADDRESSES: Comments should be submitted to: The Executive Secretary, Marine Safety Council (G–LRA–2) (CGD 81–059a) U.S. Coast Guard, Washington, D.C. 20593–0001. Between 8:00 a.m. and 3:00 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G–LRA–2), Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR Gerald D. Jenkins, Project Manager, Office of Marine Safety, Security and Environmental Protection, (G–MVP). Phone (202) 267–0224.

SUPPLEMENTARY INFORMATION: The Coast Guard has received a request from the International Association of Drilling Contractors that the comment period be extended thirty days to accommodate detailed analysis and comment. In consideration of the broad representation of the mobile offshore drilling industry by that organization and anticipated valuable contributions to the rulemaking, the Coast Guard is extended the comment period.

Dated: June 14, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–14565 Filed 6–19–89; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register
Vol. 54, No. 117
Tuesday, June 20, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Working Group on Model Rules; Public Meetings

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Working Group on Model Rules of the Administrative Conference of the United States. The committee will meet as part of an ongoing effort to develo model rules of practice and procedure which can be used by Federal agencies in formal adjudications.

DATES: Friday, July 28, 1989; Friday, September 8, 1989.

Time: 12 Noon.

Location: Administrative Conference of the United States Library, 2120 L Street, N.W., Suite 500, Washington, DC.

Contract: Gary J. Edles or Jeffrey Lubbers, (202) 254–7020.

Public Participation: Attendance at the committee meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meeting will be available upon request.

June 12, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89–14492 Filed 6–19–89; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Privacy Act of 1974, System of Records

AGENCY: Department of Agriculture.

ACTION: Notice of deletions and revisions of Privacy Act Systems of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposed to delete four notices and revise five notices describing Privacy Act systems of records maintained by the Office of Finance and Management (OFM).

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on August 4, 1989, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before July 20, 1989, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Anita Smith, Freedom of Information Act/Privacy Act Coordinator, OFM, USDA, New Orleans, Louisiana 70160; telephone (504) 255–5220.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is taking the following action:

I. The following systems of records are duplications and are hereby deleted in their entirety:

(1) USDA/O&F–1, "Administrative Billings and Collections;"

(2) USDA/O&F–2, "Travel and Transporation System;"

(3) USDA/O&F–3, "Imprest Fund Payment System;"

(4) USDA/O&F–4, "Uniform Allowance System;"

II. It is proposed that five systems of records maintained by OFM be revised as follows:

(1) USDA/OAS–1,2,3,4 and 5 would be redesignated as USDA/OFM–3,4,5,6 and 7 due to an internal reorganization.

(2) USDA/OFM–3,4,5,6 and 7, as redesignated, would be revised to:

(a) Replace all references to OAS with OFM;

(b) Add information on safeguards regarding on-line acces to information;

(c) Provide information regarding change in the retention period for magnetic tapes;

(d) Add a new routine use for releasing records to agencies invovled in investigating, prosecuting or otherwise enforcing the law;

(e) Add new routine uses concerning the release of records to the Department of Justice and in proceedings before a court or adjudicative body. These new uses are being promulgated to address concerns expressed by the district court in *Krohn vs. Department of Justice*, Civil No. 78–1536 (D.D.C. March 19, 1984). In Krohn, an FBI routine use providing for disclosure "during appropriate legal proceedings" was held to be "vague and capable of being construed so broadly as to encompass all legal proceedings * * * (and) would make disclosure as a routine use the rule rather than the exception and thus subvert the purposes of the (Privacy) Act." The new routine uses are designed to restrict the amount of information released during litigation; and

(f) Add a new routine use for disclosure to a congressional office.

(3) USDA/OFM–3 would be revised to add the "claims data base" to categories of records; add information concerning forwarding of data to consumer reporting agencies pursuant to 31 U.S.C. 3711(f), to debt collection agencies pursuant to 31 U.S.C. 3718, and to the Internal Revenue Service pursuant to 31 U.S.C. 3720A; add a routine use for referral of information to Department of Defense and the United States Postal Service for use in computer matches; and to make minor changes to previously published information regarding retrievability and safeguarding of records.

(4) USDA/OFM–4 would be revised to add to the categories of individuals covered by the system.

(5) USDA/OFM–6 would be revised to reduce the categories of individuals covered by the system.

A "Report on New System," required by 5 U.S.C. 552a(r), as implemented by OMB Circular No. A–130, was sent to the President of the Senate, the Speaker of the House of Representatives, and the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget on June 8, 1989.

Signed at Washington, DC, on June 8, 1989.

Clayton Yeutter,

Secretary of Agriculture.

USDA/OFM–3

SYSTEM NAME:

Administrative Billings and Collections, USDA/OFM.

SYSTEM LOCATION:

National Finance Center, OFM, USDA, New Orleans, Louisiana 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (including current and former USDA employees) who are indebted to the Department for any reason.

CATEGORIES OF RECORDS IN THE SYSTEM:

This automated system establishes a master file containing the debtor's name, address, social security number of assigned vendor number, amount of indebtedness, amount of current collection, and amount of total billing. Eventually, these records are transferred to a history file for inquiry use. Information regarding debts subject to IRS offset, claims on travel advances, and delinquent debtor names and social security numbers used in computer matches with the Department of Defense and the United States Postal Service are kept separate from the administrative billings and collections data base in a manually updated claims data base.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3711 through 3719; 4 CFR Chapter II.

PURPOSE:

The records in this system are used to issue bills and collect funds due to the Government in compliance with the Debt Collection Act of 1982, Pub. L. No. 97–365, 96 Stat. 1749, as amended by Pub. L. No. 98–167, 97 Stat. 1104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, or rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her indvidual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records of the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of the individual.

(5) Information will be forwarded to another Federal agency when a USDA employee accepts employment with another Federal agency.

(6) Referral of information regarding indebtedness to the Defense Manpower Data Center, Department of Defense, and the United States Postal Service for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their payments of debts owed to the U.S. Government in order to collect debts by voluntary repayment, administrative or salary offset procedures under the provisions of 5 U.S.C. 5514, or through collection agencies under the provisions of 31 U.S.C. 3718.

(7) Information contained in this system of records may be disclosed to a debt collection agency, when USDA determines such referral is appropriate for collecting the debtor's account as provided for in U.S. Government contracts with collection agencies executed pursuant to 31 U.S.C. 3718.

(8) Where prior collection efforts have failed, the USDA will refer to the Internal Revenue Service (IRS) information from this system of records concerning past-due legally enforceable debts for offset against tax refunds that may become due the debtors for the tax year in which referral is made, in accordnace with IRS regulation at 26 CFR 301.6402–6T, Offset of Past-due Legally Enforceable Debt Against Overpayment, and under the authority contained in 31 U.S.C. 3720A.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information contained in this system of records may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORING:

Records are maintained on magnetic tape files, disk files, and in file folders at the National Finance Center addressed above.

RETRIEVABILITY:

Records in the administrative billings and collections data base are retrieved by social security number and by name of individual; equivalent identifying number in case of non-USDA employees. Records in the claims data base are retrieved by claim number.

SAFEGUARDS:

Magnetic tape files and disk files are kept in a locked computer room and tape library which can be accessed by authorized personnel only. File folders are maintained in secured areas with access by authorized personnel only. Disk files are password protected to limit access to authorized personnel only. On-line access by National Finance Center and other agency personnel is password protected.

RETENTION AND DISPOSAL:

Master history magnetic tapes are retained in accordance with a tape library management schedule. Manual records are transferred to the Federal Records Center for storage and disposition in accordance with General Services Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Finance Center, OFM, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160.

NOTIFICATION PROCEDURE:

Any indivdiual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her from the System Manager. A request for information pertaining to an individual should be in writing and should contain: Name, address, social security number and particulars involved (i.e., dates of claims, copies of correspondence, etc.).

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in the system which pertains to him/her by submitting a written request to the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from USDA employees, former USDA employees, non-USDA employees, agency claimants, and USDA or other investigative personnel.

USDA/OFM-4

SYSTEM NAME:

Travel and Transportation System, USDA/OFM.

SYSTEM LOCATION:

National Finance Center, OFM, USDA, New Orleans, Louisiana 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have funds advanced to them for official travel use, individuals who have U.S. Government Transportation Requests assigned to them for purchasing tickets to be used for official travel, approving officials, and individuals who perform official USDA travel and are reimbursed with Government funds are included in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of complete files on advances to and repayments by individuals, assignment and use of Government Transportation Requests by individuals, and payments for official travel to individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 57; FPMR 101–7.

PURPOSE:

The records in this system are used to process employee travel advances and reimbursements and to process payments for services provided by common carriers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, or rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORING:

Records are maintained on computer tapes, disks and in file folders at the National Finance Center addressed above.

RETRIEVABILITY:

Records are retrieved by Social Security Number and by name of individual.

SAFEGUARDS:

Magnetic tape files and disk files are kept in a locked computer room and tape library which can be accessed by authorized personnel only. File folders are maintained in secured areas with access by authorized personnel only. Disk files are password protected to limit access to authorized personnel only. On-line access by National Finance Center and agency personnel is password protected.

RETENTION AND DISPOSAL:

Master history magnetic tapes are retained in accordance with a tape library management schedule. Manual records are transferred to the Federal Records Center for storage and disposition in accordance with General Services Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Finance Center, OFM, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her from the System Manager. A request for information pertaining to an individual should be in writing and should contain: Name, address, social security number and particulars involved.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting

a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information on procedures for contesting a record in the system that pertains to him/her by submitting a written request to the System Manager.

RECORD SOURCES CATEGORIES:

Information in this system comes primarily from individuals who request advances prior to travel, submit Travel Vouchers for reimbursement after travel is performed, or request Government Transportation Requests for use in purchasing passenger tickets. Some of the information is obtained from the payroll and personnel systems maintained by the National Finance Center.

USDA/OFM-5

SYSTEM NAME:

Imprest Fund Payment System, USDA/OFM.

SYSTEM LOCATION:

National Finance Center, OFM, USDA, New Orleans, Louisiana 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All USDA imprest cashiers and alternates and USDA employees designated as chiefs of field party.

CATEGORIES OF RECORDS IN THE SYSTEM:

This automated system establishes master files containing the name, social security number, employment address and telephone, and amount of advance for each cashier, alternate cashier, and chief of field party. It also includes records of disbursements, reimbursements, accountability reports and verification, and audit of funds.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3322, and 3321; I TFM 4–3000.

PURPOSE:

The records in this system are used to process advances and reimbursement vouchers for imprest fund cashiers and chiefs of field parties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, or rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her individual capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(4) Disclosure may be made to a congressional office from the record of an individual in response to any inquiry from the congressional office made on behalf of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORING:

Records are maintained on microfilm cartridges, magnetic tape files, disk files, and file folders.

RETRIEVABILITY:

Records are retrieved primarily by social security number of the individual cashier, alternate cashier, or chief of party; and secondarily by imprest fund number.

SAFEGUARDS:

Magnetic tapes files and disk files are kept in a locked computer room and tape library which can be accessed by authorized personnel only. File folders are maintained in secured areas with access by authorized personnel only. Disk files are password protected to limit access to authorized personnel only. On-line access by National Finance Center and agency personnel is password protected.

RETENTION AND DISPOSAL:

Master history magnetic tapes are retained in accordance with a tape library management schedule. Manual records are transferred to the Federal Records Center for storage and disposition in accordance with General Services Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Finance Center, OFM, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her from the System Manager. A request for information pertaining to an individual should be in writing and should contain: Name, address, social security number and particulars involved (i.e., date and type of document in question, etc.).

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information on procedures for contesting a record in the system that pertains to him/her by submitting a written request to the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system is derived from documents submitted by USDA agencies.

USDA/OFM-6

SYSTEM NAME:

Uniform Allowance System, USDA/OFM.

SYSTEM LOCATION:

National Finance Center, OFM, USDA, New Orleans, Louisiana 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All USDA employees (except Forest Service) entitled to and receiving allowances for the purchase of uniforms. Forest Service employees are covered by another system of records, USDA/FS-3, Uniform Allowance System, published in the Federal Register on October 20, 1986 (Vol. 51, No. 202 p. 37208).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of complete files on advances, accruals, and payments to individuals within the Department for uniform allowances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 5 U.S.C. 5901 through 5903.

PURPOSE:

The records in this system are used to process advances, accruals, and payments of uniform allowance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that dislcosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer tapes, disks and in file folders at the National Finance Center addressed above.

RETRIEVABILITY:

Records are indexed by name and social security number of individual employee.

SAFEGUARDS:

Magnetic tape files and disk files are kept in a locked computer room and tape library which can be accessed by authorized personnel only. File folders are maintained in secured areas with access by authorized personnel only. Disk files are password protected to limit access to authorized personnel. On-line access by National Finance Center and agency personnel is password protected.

RETENTION AND DISPOSAL:

Master history magnetic tapes are retained in accordance with a tape library management schedule. Manual records are transferred for storage and disposition to the Federal Records Center in accordance with General Services Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Finance Center, OFM, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her from the System Manager. A request for information pertainig to an individual should be in writing and should contain: Name, address, social security number and particulars involved.

RECORDS ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

ANY INDIVIDUAL MAY OBTAIN INFORMATION AS TO THE PROCEDURES FOR CONTESTING A RECORD IN THE SYSTEM WHICH PERTAINS TO HIM/HER BY SUBMITTING A REQUEST TO THE SYSTEM MANAGER.

RECORD SOURCE CATEGORIES:

Information in this system comes from USDA agency records.

USDA/OFM-7

SYSTEM NAME:

SF-1099 Reporting System, USDA/OFM.

SYSTEM LOCATION:

National Finance Center, OFM, USDA, New Orleans, Louisiana 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (excluding USDA employees) who receive payments in the form of rents, royalties, prizes or awards; individuals (excluding USDA employees) who receive payments for non-personal service contracts, commissions, or compensation for services which are subject to SF-1099 reporting requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

The automated system establishes a master file containing the individual's name, address, social security number (or employer identification number), ZIP code, amount of payment, and other

information necessary to accurately identify covered payment transactions applicable to SF–1099 reporting requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 6011 and 6109, and 26 CFR 301.6109–1.

PURPOSE:

The records in this system are used to accumulate payments made to individuals that are subject to Form 1099 tax reporting.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, or rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of the individual.

(5) Information from this system of records will be forwarded to the Internal Revenue Service for income tax purposes.

(6) Release of information to other USDA agencies for internal processing purposes.

POLICIES AND PRACTCES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORING:

Records are maintained on computer tapes, disks and in file folders at the National Finance Center addressed above.

RETRIEVABILITY:

Records are retrieved by social security or employee identification number.

SAFEGUARDS:

Magnetic tape files and disk files are kept in a locked computer room and tape library which can be accessed by authorized personnel only. File folders are maintained in secured areas with access by authorized personnel only. Disk files are password protected to limit access to authorized personnel only. On-line access by National Finance Center and agency personnel is password protected.

RETENTION AND DISPOSAL:

Master history magnetic tapes are retained in accordance with a tape library management schedule. Manual records are transferred to the Federal Records Center for storage and disposition in accordance with General Services Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Finance Center, OFM, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her from the System Manager. A request for information pertaining to an individual should be in writing and should contain: Name, address, social security number and particulars involved (i.e., transaction dates, copies of relevant transaction documentation, etc.).

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in the system which pertains to him/her by submitting a written request to the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from individuals who provide covered goods or services to USDA agencies.

[FR Doc. 89–14562 Filed 6–19–89; 8:45 am]
BILLING CODE 3410–90–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 90526–9126]

Foreign Availability Assessment; Optical Fiber Characterization Systems

AGENCY: Office of Foreign Availability, 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 optical fiber characterization systems controlled under Export Control Commodity Number 1353A of the Commodity Control List, a listing of items controlled for export by the Department of Commerce. Based on this assessment, the Department of Commerce has not found foreign availability for this commodity.

FOR FURTHER INFORMATION CONTACT: Randy Pratt, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–5953.

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by section 5(f) and (h) of the EAA to initiate and review claims of foreign availability of items controlled for national security purposes. Part 791 of the Export Administration Regulations establishes the procedures and criteria for determining foreign availability. The Secretary of Commerce is authorized by statute to determine foreign availability and has delegated this authority to the Assistant Secretary for Export Administration.

In any case in which the Assistant Secretary determines that an item of comparable quality to a U.S. item controlled for national security purposes is available-in-fact to a controlled country from a foreign source in quantities sufficient to render the control ineffective in meeting its purposes, the Assistant Secretary may not require a validated license for its export.

In 1988, OFA formally undertook an assessment of optical fiber characterization systems. OFA has completed the assessment of the availability from foreign sources of the above-mentioned equipment as defined by law. The Departments of Defense and State, as well as other interested agencies of the U.S. Government, have reviewed the report of the assessment. Based upon the assessment and the statutory criteria, the Assistant Secretary has determined that foreign availability of such equipment does not exist within the meaning of Section 5(f) of the EAA.

If the Office of Foreign Availability 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.

Dated: June 15, 1989.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 89–14551 Filed 6–19–89; 8:45 am]

BILLING CODE 3510–DT–M

National Institute of Standards and Technology

[Docket No. 90638–9138]

National Voluntary Laboratory Accreditation Program; Publication of Directory Supplement

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Publication of NVLAP Directory Supplement.

SUMMARY: The National Institute of Standards and Technology (NIST) announces 101 additional laboratory accreditation actions for asbestos fiber analysis taken during the second quarter of 1989. The accompanying table supplements the notice published in the Federal Register on April 26, 1989. The table lists testing laboratories receiving initial accreditation to perform bulk asbestos analysis in accordance with 40 Code of Federal Regulations Chapter I (1–1–87 edition) Part 763, Subpart F, Appendix A pages 293–299 or the current U.S. Environmental Protection Agency method for the analysis of asbestos in building materials by polarized light microscopy.

FOR FURTHER INFORMATION CONTACT: John L. Donaldson, Manager, Labatory Accreditation, Building 411, Room A124, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–4016. Also current information can be obtained by communicating by computer with the NVLAP computer electronic bulletin board on 301–948–2058.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology periodically publishes supplements to the NVLAP Directory of Accredited Laboratories. This supplement is issued at this time to announce the large number of new actions taken and is published pursuant to § 7.6(b) of the National Voluntary Laboratory Accreditation Program Procedures (Title 15, Part 7, of the Code of Federal Regulations).

Raymond G. Kammer,

Acting Director.

Date: June 14, 1989.

Laboratories Accredited by NVLAP to Perform Bulk Asbestos Analysis (Alphabetically Listed by State)

Professional Contract Services, Inc., 1105 Fitzpatrick Avenue, P.O. Box 2605, Opelika, AL 36803, Phone: 205–749–2636

EEG, Inc., 220A N. Knoxville, Russellville, AR 72801, Phone: 501–968–6767

Microprobe, 5104 East Burns Street, Tucson, AZ 85711, Phone: 602–745–1189

University Associates, Ltd., 2425–A N. Nuachuca Drive, Tucson, AZ 85745, Phone: 602–624–9366

Aerojet Solid Propulsion Co., Hazel and Highway 50, Sacramento, CA 95852, Phone: 916–355–4051

Associated Safety Consultants, 13363 Saticoy Street, Suite 204, North Hollywood, CA 91605, Phone: 818–513–0471

Clark Geological Services, 3479 Edison Way, Fremont, CA 94538, Phone: 415–659–1784

Esstek, 3045 Teagarden Street, San Leandro, CA 94577, Phone: 303–425–0013

McCrone Environmental Services—Calif., 120 Newport Center Drive, Suite 240, Newport Beach, CA 92660, Phone: 714–759–6619

Testwell Craig Labs of Connecticut, Inc., 25 Henry Street, Bethel, CT 06801, Phone: 203–743–7281

ATEC Associates, Inc., 4845 Rosselle Street, Jacksonville, FL 32205, Phone: 904–387–6404

ATEC Environmental Consultants, 1535 Cogswell Street, Suite A5, Rockledge, FL 32955, Phone: 407–639–9069

Briggs Associates, Inc., 4401 Vineland Road, Suite A9, Orlando, FL 32811, Phone: 407–422–3522

Pensacola P.O.C., Inc., 109 South Second Street, Pensacola, FL 32507, Phone: 904–456–4406

Testwell Craig Labs of Florida, Inc., 7104 Northwest 51st Street, Miami, FL 33166, Phone: 305–593–0561

Testwell Craig Labs of Tampa, Inc., 11553 U.S. Highway 41, South, Gibsonton, FL 33534, Phone: 813–667–0242

Applied Environmental Testing Labs., Inc., 680 Thornton Way, Suite 202, P.O. Box 959, Lithia Springs, GA 30057, Phone: 404–948–4919

GTRI Microscopy Research Laboratory, 151 Sixth Street, O'Keefe Building, Atlanta, GA 30332, Phone: 404–894–3806

Geo-Environmental Services, Inc., 141 West Wieuca Road, Suite 200A, Atlanta, GA 30342, Phone: 404–257–9303

Law Associates, Inc., 1386 Mayson Street, Atlanta, GA 30144, Phone: 404–892–3200

McCrone Environmental Services, Inc., 1412 Oakbrook Dr., Suite 100, Norcross, GA 30093, Phone: 404–368–9600

HAZTOX, Inc., 820 North Linder Road, Meridian, ID 83642, Phone: 208–888–7121

Air Tech Associates, Inc., 4100 Madison Lower Level 4, Hillside, IL 60162, Phone: 312–547–8117

BCA Laboratories, 1102 S. Main St., Bloomington, IL 61701, Phone: 309–828–7772

Garnow, Conibear & Associates, Ltd., 333 W. Wacker Drive, Suite 1400, Chicago, IL 60606, Phone: 312–782–4486

Micro-Fiber Laboratories, Inc., 605 Landwehr Road, Northbrook, IL 60062, Phone: 312–498–4127

TEM, Inc., 443 Duane Street, Glen Ellyn, IL 60137, Phone: 312–790–0880

United Analytical Services, Inc., 4410 W. Roosevelt Road, Suite 101, Hillside, IL 60162, Phone: 312–449–0070

ATEC Associates, Inc., 5150 East 65th Street, Indianapolis, IN 46220, Phone: 317–849–4990

ATEC Associates, Inc., 1501 E. Main Street, Griffith, IN 46319, Phone: 219–924–6690

Cole Associates, Inc., 2211 East Jefferson Boulevard, South Bend, IN 46615, Phone: 219–236–4400
Zimmerlin Consulting Group, 3420 East 96th Street, Suite A, Indianapolis, IN 46240, Phone: 317–574–0648
ACT, 14953 West 101 Terrace, Lenexa, KS 66215, Phone: 913–492–1337
Chemalytics, Inc., 33 East 7th Street, Covington, KY 41011, Phone: 606–431–6224
Sunbelt Associates, Inc., 6961 Mayo Blvd., New Orleans, LA 70126, Phone: 504–286–6798
Weintritt Testing Laboratories, Inc., 305 Andrew Guidry Road, Lafayette, LA 70503, Phone: 318–981–1560
Briggs Associates, Inc., 400 Hingham Street, Roadland, MA 02370, Phone: 617–871–6040
Hygienetics Analytical Services, Inc., 150 Causeway Street, Boston, MA 02114, Phone: 617–723–4664
AMA Analytical Services, Inc., 4475 Forbes Boulevard, Lanham, MD 20706, Phone: 800–459–2640
Briggs Associates, Inc., 8300 Guilford Road, Suite E, Columbia, MD 21046, Phone: 301–381–4434
Maryland Department of Health and Mental Hygiene, 201 W. Preston Street, P.O. Box 2355, Baltimore, MD 21203, Phone: 301–225–6212
Alderink & Associates, Inc., 3221 3 Mile Road NW., Grand Rapids, MI 49504, Phone: 616–791–0730
Environmental Evaluation and Lab Serv., 225 Parsons St., Box 1665, Kalamazoo, MI 49007, Phone: 616–388–8099
IHI–KEMRON, 32740 Northwestern Hwy, Farmington Hills, MI 48018, Phone: 313–626–2426
Industrial Environmental Consult., Ltd., East Line Office Park, 1760 East Grand River, East Lansing, MI 48823, Phone: 517–351–4992
Applied Environmental Sciences, Inc., 511 11th Ave. S., Box 220, Minneapolis, MN 55415, Phone: 612–339–5559
Baird Scientific, 221 W. Fourth Street, P.O. Box 842, Carthage, MO 64836, Phone: 417–358–5567
Carolina Environmental, 5104 Suite 201–C Western Boulevard, Raleigh, NC 27606, Phone: 919–859–0477
Quality Analytical Services, Inc., 709 West Johnson St., Raleigh, NC 27603, Phone: 919–839–0757
Roberts Environmental Services, Inc., P.O. Box 308, Swansboro, NC 28584, Phone: 919–393–6565
Amoco Oil Company Mandan Refinery, Mandan Avenue and Old Red Trail, Mandan, ND 58554, Phone: 701–667–2463
Applied Occupational Health Systems, 29 River Road, Suite 18, Concord, NH 03301, Phone: 603–228–3610
Balsam Environmental Consultants, Inc., 59 Stiles Road, Salem, NH 03079, Phone: 603–893–0616
Briggs Associates, Inc., 361 Hanover Street, Portsmouth, NJ 03801, Phone: 603–431–2870
PMK Engineering & Testing Inc., 516 Bloy Street, Hillside, NJ 07205, Phone: 201–686–0044
Testwell Craig Labs of New Jersey, Inc., 50 Passaic Avenue, Fairfield, NJ 07006, Phone: 201–882–8377
Testwell Craig Testing Labs, Inc., 565 East Harding Highway, Mays Landing, NJ 08330, Phone: 609–625–1700
ASTECO, Incorporated, 4287 Witmer Road, Niagara Falls, NY 14305, Phone: 716–297–5992
ATC Environmental, Inc., 104 East 25th Street, 10th Floor, New York City, NY 10010, Phone: 212–353–8280
Adirondack Environmental Services, Inc., 298 Riverside Avenue, P.O. Box 265, Rensselaer, NY 12144, Phone: 518–785–0128
Brad Associates, 1 Rosanne Court, Lake Ronkonkoma, NY 11779, Phone: 516–467–4539
Buffalo Testing Laboratories, Inc., 902 Kenmore Avenue, Buffalo, NY 14216, Phone: 716–873–2302
Chenango Environmental Laboratory, Inc., 350 State Street, Binghamton, NY 13901, Phone: 607–723–8175
Hazardous Waste Engineering, Consultants, Inc., 47 Hudson St., Ossining, NY 10562, Phone: 914–762–9000
Industrial Testing Laboratories, 50 Madison Avenue, New York, NY 10010, Phone: 212–685–8788
KEMRON Environmental Services, Inc., 755 New York Avenue, Huntington, NY 11743, Phone: 516–427–0950
Laboratory Testing Services, 75 Urban Avenue, Westbury, NY 11590, Phone: 516–334–7770
Lozier Laboratories, Inc. 23 North Main Street, Fairport, NY 14450, Phone: 716–388–0050
Monroe Monitoring & Analysis, 215 Alexander Street, Rochester, NY 14607, Phone: 716–546–8580
National Testing Laboratories, Inc., 27–14 39th Avenue, Long Island City, NY 11101, Phone: 718–784–2626
Professional Service Industries, Inc., Pittsburgh Testing Laboratory Division, 423A New Karner Road, Albany, NY 12205, Phone: 518–452–0777
Testwell Craig Laboratories, Inc., 47 Hudson Street, Ossining, NY 10562, Phone: 914–736–1776
Testwell Craig Labs of Albany, Inc., 518 Clinton Avenue, Albany, NY 12206, Phone: 518–436–4114
Testwell Craig Peters, Inc., 127 Seeley Road, Syracuse, NY 13224, Phone: 315–446–0008
Alloway Testing, 1325 N. Cole St., Lima, OH 45801, Phone: 419–223–1362
DataChem, Inc., 4388 Glendale-Milford Road, Cincinnati, OH 45242, Phone: 513–783–5336
Hayden Environmental Group, Inc., 6015 Manning Road, Miamisburg, OH 45342, Phone: 513–866–5908
National Petrographic Services, 4484 Willowbrook Road, Columbus, OH 43220, Phone: 614–459–7360
Wadsworth/Alert Laboratory, 5405 E. Schaaf Rd., P.O. Box 31454, Cleveland, OH 44131, Phone: 216–642–9151
Zimmerlin Consulting Group, 3082 Brown Park Drive, Suite D, Hilliard, OH 43026, Phone: 614–876–1153
Occupational Safety and Health Consultants Incorporated, 208 N. Armstrong, Bixby, OK 74008, Phone: 918–366–4834
Marine and Environmental Testing, Inc., P.O. Box 1142, Beaverton, OR 97075, Phone: 503–286–2950
Professional Service Industries, Inc., 611 S.E. Harrison Street, Portland, OR 97214, Phone: 503–232–2183
BCM Engineers Inc., One Plymouth Meeting, Plymouth Meeting, PA 19462, Phone: 215–825–3800
BCM Engineers Inc., 5777 Baum Boulevard, Pittsburgh, PA 15206, Phone: 412–361–6000
Lancaster Laboratories, Inc., 2425 New Holland Pike, Lancaster, PA 17601, Phone: 717–656–2301
Lehigh Valley Analytics, a division of Laboratory Resources, Inc., 60 West Broad Street, Bethlehem, PA 18018, Phone: 215–866–4434
Professional Service Industries, Inc., Pittsburgh Testing Laboratory Division, 850 Poplar Street, Pittsburgh, PA 15220, Phone: 412–922–4000
Certified Engineering & Testing Co., Inc., 2600 Poplar Avenue, Suite 314, Memphis, TN 38112, Phone: 901–458–6860
ATEC Associates, Inc., 11356 Mathis Avenue, Dallas, TX 75229, Phone: 219–243–8931
Hanby Analytical Laboratories, Inc., 4400 S. Wayside, Suite 107, Houston, TX 77087, Phone: 713–649–4500
Hanby Analytical Laboratories, Inc., Mobile Unit, 4400 S. Wayside, Suite 107, Houston, TX 77087, Phone: 713–649–4500
University of Texas, Health Center, Dept. of Cell Biology & Enviro. Sciences, P.O. Box 2003, Tyler, TX 75710, Phone: 214–877–7554
DataChem, Inc., 960 West LeVoy Drive, Salt Lake City, UT 84123, Phone: 801–266–7700
Dixon Information Inc., 78 West 2400 South, South Salt Lake City, UT 84115, Phone: 801–486–0800
A.F. Meyer and Associates, Inc., 6849 Old Dominion Drive, Suite 228, McLean, VA 22101, Phone: 703–734–9093
Hess Oil Virgin Islands Corp. (HOVIC), P.O. Box 127, Kingshill, St. Croix, VI 00850, Phone: 809–778–4314
Esstek, 12822 Gateway Drive, Seattle, WA 98168, Phone: 303–425–0013
Wausau Insurance Companies, Environmental Health Laboratory, 2000 Westwood Drive, Wausau, WI 54401, Phone: 715–842–6810
Asbestos Laboratory Division-P.H.I., 132 Oakwood Road, Charleston, WV 25314, Phone: 304–342–6424
McMaster University, Occup. Health Lab., 1200 Main Street West, Hamilton, Ontario, L8N 3Z5, CANADA, Phone: 416–525–9140.

[FR Doc. 89–14588 Filed 6–19–89; 8:45 am]
BILLING CODE 3570–13–M

National Oceanic and Atmospheric Administration

Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration.
ACTION: Notice of Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will

provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel Meeting in the areas of artificial intelligence, transition activities, budget status, the fellowship program, new panel candidates, developing new business initiatives with the Sea Grant Program for enhancement of Department of Commerce goals, and new business including installation of Panel officers. The panel members will also participate in a joint session with the Sea Grant Director's Council.

DATES: The announced meeting is scheduled during two days: Monday, July 17, 1989, 2:00–5:00 p.m. and Tuesday, July 18, 1989, 10:30 a.m.–12:00 p.m. and 1:30–4:00 p.m.

ADDRESS: Red Lion Motor Inn-Portland Center, Pyramid Lake Room, 310 S.W. Lincoln, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shephard, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 6010 Executive Boulevard, Room 812, Rockville, Maryland 20852, (301) 443–8925.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, Under Secretary, NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Monday, July 17, 1989—2:00–5:00 p.m.

Status of Budget, Management, et al.
Cooperative Extension Committee Task Force Report
New Panel Member Report
Subcommittee on National Office
Subcommittee on Law & Policy
Use of Advisory Committees Nationwide
Business Initiatives Committee
AI Workshop Report
Special Focus Programs
Sea Grant Fellows Update
Marketing of Sea Grant
NOAA and OAR Update
New Panel Officers

Tuesday, July 1, 1989—10:30 a.m.–12:00 p.m.

Follow-on meeting of unfinished business
Lunch

1:30 p.m.–4:00 p.m.

Follow-on meeting of unfinished business

The meeting will be open to the public.

Alan R. Thomas,

Acting Assistant Administrator, Oceanic and Atmospheric Research.

Date: May 24, 1989.

[FR Doc. 89–14546 Filed 6–19–89; 8:45 am]

BILLING CODE 3510–12–M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Romberg Tiburon Centers (P442); Correction

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Marine mammals; Notice of correction.

SUMMARY: The National Marine Fisheries Service is correcting the notice of application for a permit for Audrey Dianne Kopec, Romberg Tiburon Center (P442). In notice document 89–11125, issued on Wednesday, May 10, 1989, beginning on page 20174, column 2, delete paragraph 3, and replace with new paragraph 3 as follows:

3. *Name and Number of Marine Mammals:* Harbor seal, (*Phoca vitulina richardsi*). A maximum 100 seals will be tagged annually. Of these 100 seals, radio transmitters will be attached to a maximum of 30 seals and blood samples will be taken from the radio-tagged seals. Up to 120 additional seals may be harassed during the tagging operations.

Dated: June 13, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs

[FR Doc. 89–14517 Filed 6–19–89; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of the Coverage of Group II and the Wool Subgroup to Include Certain Wool, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Indonesia

June 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage of group II and its subgroup.

EFFECTIVE DATE: June 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

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).

As a result of category reclassification under the Harmonized Commodity Code, the current coverage of group II, and its wool subgroup, is being amended.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also 53 FR 24476, published on June 29, 1988.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreement

June 14, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive amends, but does not cancel, the directive of June 24, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the period which began on July 1, 1988 and extends through June 30, 1989.

Effective on June 21, 1989, the directive on June 24, 1988, as amended, is being amended further to include wool, silk blend and other vegetable fiber textile products in Categories 439 and 839, produced or manufactured in Indonesia and exported during the period January 1, 1989 through June 30, 1989 in the Current Group II limit. Category 439 also shall be subject to the wool subgroup limit in Group II. The current Group II limit and subgroup limit, as previsouly adjusted, shall remain the same.

There are no imports in Categories 439 and 839 for the period January 1, 1989 through March 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–14501 Filed 6–19–89; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Audit of Billing for Medical Care Coordination of Benefits; DD Form X007; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 1 hour.

Frequency of Response: One response per respondent.

Number of Respondents: 3,000.

Annual Burden Hours: 3,000.

Annual Responses: 3,000.

Needs and Uses: Pub. L. 99–272 gives the Government the right to collect payment from private insurance companies for inpatient medical care provided to dependents, retirees and retirees' dependents at military treatement facilities. The questionnaire will be used to collect information regarding private insurance coverage, evaluate procedures, and practices used by the Military to collect and to project the total dollars available for collection.

Affected Public: Individual or households; Federal agencies or employees.

Frequency: On occasion.

Respondents Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 13, 1989.

[FR Doc. 89–14503 Filed 6–19–89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Army Subgroup on Low Observable Technologies

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Army Subgroup on Low Observable Technologies scheduled for March 30, 1989 as published in the **Federal Register** (Vol. 53, No. 238, Page 49907, Monday, December 12, 1988, FR Doc 88–28507) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 14, 1989.

[FR Doc. 89–14504 Filed 6–19–89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Industrial Cooperation with Pacific Rim Nations will meet in closed session on July 6, 1989 at the Hughes Corporation, Rosslyn, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the potential for achieving US security objectives in the Pacific Rim area through defense industrial cooperation with the nations of that area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

June 14, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–14505 Filed 6–19–89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board 1989 Summer Study on Improving Test and Evaluation Effectiveness

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board 1989 Summer Study on Improving Test and Evaluation Effectiveness scheduled for June 21–22, 1989 as published in the **Federal Register** (Vol. 54, No. 70, Page 14833–14834, Thursday, April 13, 1989, FR Doc 89–8806) has been cancelled.

June 14, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–14507 Filed 6–19–89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology

ACTION: Change in date of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for June 7–8 and June 27–28, 1989 as published in the **Federal Register** (Vol. 54, No. 96, Page 21648, Friday, May 19, 1989, FR Doc. 89–12018) will be held on July 27–28 and August 23–24, 1989.

June 14, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–14508 Filed 6–19–89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on SDIO Technology Assessment

ACTION: Change in date of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on SDIO Technology Assessment scheduled for April 5–6, 1989 as published in the **Federal Register** (Vol. 54, No. 51, Page 11263, Friday, March 17, 1989, FR Doc. 89–6295) will be held on July 6–7, 1989. This notice supercedes the change previously submitted in **Federal Register** (Vol. 54, No. 76, Page 16155, Friday, April 21, 1989, FR Doc. 89–9625).

June 14, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–14509 Filed 6–19–89; 8:45 am]

BILLING CODE 3810-01-M

Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, July 11, 1989; Tuesday, July 18, 1989; and Tuesday, July 25, 1989 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and priviledged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 14, 1989.

[FR Doc. 89-14506 Filed 6-19-89; 8:45 am]

BILLING CODE 3810-01-M

U.S. Court of Military Appeals Code Committee Meeting

ACTION: Notice of Public Hearing.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 10:00 a.m. on June 27, 1989, in the Judge William Holmes Cook Conference Room at the Courthouse of the United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001. The agenda for this meeting will include consideration of the proposed changes to the Manual for Courts-Martial, United States, 1984, as well as other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas F.Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001; telephone (202) 272-1448.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 14, 1989.

[FR Doc. 89-14502 Filed 6-19-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Federally Funded Research and Development Center (FFRDC)

AGENCY: United States Army, Armanent, Munitions and Chemical Command; Armament Research, Development and Engineering Center.

SUMMARY: Notice is hereby given that, in accordance with OFPP Policy Letter 84-1, Appendix III, 4 April 1984, the U.S. Army intends to establish a Federally Funded Research and Development Center (FFRDC) for a long term research program to advance the state-of-the-art in areas of electromechanics and hypervelocity testing as applicable to future weapon systems.

Program Requirements: This program will include basic research, analysis, design, fabrication, experimentation and training in these and related areas. The electromechanics area will include but not be limited to compact pulse power supplies, advanced electric launchers and related materials research. Hypervelocity testing research will include but not be limited to compatible launch package design and interface, impact characterization, test planning, instrumentation, impact testing, data reduction/analysis and related materials research. An FFRDC is an activity that is operated, managed and/or administered by either a univerity or consortium of universities, other nonprofit organization or industrial firm as an autonomous organization or as an identifiable separate operating unit of a parent organization.

ADDRESS: Send inquiries to Commander, U.S. Army AMCCOM, ATTN: AMSMC-PCW-D(D), Robert Wisser, Picatinny Arsenal, New Jersey 07806-5000.

FOR FURTHER INFORMATION CONTACT: Robert Wisser, Contract Specialist, Research, Development and Engineering Center on (201) 724-4674.

John O. Roach, II

Army Liaison Officer with the Federal Register.

[FR Doc. 89-14495 Filed 6-19-89; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplement to the Final Environmental Impact Statement (FEIS) for Proposed Navigation Improvements and Small Boat Harbor at Olcott on Lake Ontario, Niagara County, NY

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action involves construction of protective rubblemound breakwaters with embayments, and extension of entrance navigation channels by dredging. The action is necessary because of navigation and development opportunity problems including: wave and surge action problems in the lake entrance channel, lack of well protected docking facilities, constricted navigation and crowded conditions within the existing harbor, and a need for increased public (fisherman) access to the harbor area. The proposed action would alleviate these problems by providing a well protected harbor, including embayment(s) for docking facilities, improved navigation channels, and public (fisherman) breakwater access. The community will develop associated upland facilities.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Supplement can be directed to: Tod Smith, (716) 876-5454, Ext. 2173, U.S. Army Corps of Engineers, Buffalo District, Environmental Analysis Branch, 1776 Niagara Street, Buffalo, New York 14207-3199.

SUPPLEMENTARY INFORMATION:

Previous Report: Final Environmental Impact Statement, Small Boat Harbor, Olcott Harbor, Niagara County, New York, Office of the Chief of Engineers, Department of the Army, Washington, DC 20314, November 1978. Filed with USEPA, 5 October 1979.

Authority: These project supplemental studies were authorized by the Water Resources Development Act of 1986, Public Law 99-662, November 1986.

Proposed Action: The proposed action involves construction of protective rubblemound breakwaters incorporating pedestrian (fisherman) access. The breakwaters would protect the harbor entrance channels and provide protected embayment area(s) for additional docking facilities. Harbor entrance navigation channels would be extended by dredging. The local sponsors would develop associated facilitative developments including: access, parking, boat ramp, marina, and sanitary facilities.

Alternatives: The U.S. Army Corps of Engineers, Buffalo District has investigated concerns and potential alternative measures for Olcott through a series of progressive studies. Some 12 breakwater and channel improvement alternative plans were developed and evaluated for engineering and economic feasibility, and environmental and social acceptability, and overall in best meeting developed project objectives. With conclusion of the feasibility study (1979), Plan 10 consisting of rubblemound breakwaters with some pedestrian (fisherman) access, an east outer harbor embayment, channel improvements, and associated dock and upland facilities development (local sponsor responsibility) was recommended pending supplemental finalization studies.

Several concerns needed to be addressed in finalizing the proposed Olcott Harbor plan. Supplemental studies needed to be conducted pertaining to project optimization, effects of breakwater configuration on the harbor area, dredging and dredged material disposal procedures, fish access impacts, water quality impacts, pedestrian (fisherman) access, and facilitative developments (i.e., access, marina facilities, parking, sanitary facilities, etc.). Supplemental study and plan optimization authority and funding was approved in 1986 and 1988. Supplemental investigations are being conducted and results will be presented in the supplemental reports.

Scoping Process: Scoping coordination has been conducted for each phase of this study. Study activities are coordinated with government agencies, interest groups, and the general public. The general intent is to gain assistance in: identifying and scoping problems, needs, and concerns; developing feasible alternative solutions; and in assessing, evaluating, and identifying preferred and selected plans. The study public involvement process incorporates written correspondence, telephone communication, public meetings/workshops, and draft and final report review procedures. Additional scoping input from potentially affected Federal, State, and local agencies or interests is invited by this notice.

Significant issues to be analyzed in depth in this supplement include those "concerns needed to be addressed" under Alternatives.

The study shall be conducted so as to comply with the various Federal and State Environmental Statutes and Executive Orders and associated review procedures. When the Feasibility Report and accompanying Supplement to the EIS are completed for review, the combined document will be filed with the U.S. Environmental Protection Agency to be coordinated and reviewed under the National Environmental Policy Act procedures.

Scoping Meeting: Since Federal, State, and local interests have been involved in the reformulation of the authorized project; and adequate coordination is already being conducted, no further formal scoping meeting is anticipated.

Availability: The combined document consisting of a project Feasibility Report and Supplement to the Environmental Impact Statement will be made available to the public about December 1989. A local public meeting will likely be scheduled after coordination of the draft reports.

Date: May 31, 1989.

Hugh F. Boyd III,

Colonel, U.S. Army, Commanding.

[FR Doc. 89-14493 Filed 6-19-89; 8:45 am]

BILLING CODE 3710-gp-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Flood Damage Reduction Project Along Tonawanda Creek in Niagara and Erie Counties, NY

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action involves channelization and/or clearing and snagging along sections of Tonawanda Creek and Ransom Creek a tributary; construction of a diversion channel; and some diversion of high flows to the Erie Barge Canal. The action is necessary in order to alleviate floording problems within the project area. It is expected that the proposed project would substantially reduce flooding problems and damages to residential, commercial, and public properties.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to: Tod Smith, (716) 876-5454, Ext. 2173, U.S. Army Corps of Engineers, Buffalo District, Environmental Analysis Branch, 1776 Niagara Street, Buffalo, New York 14207-3199.

SUPPLEMENTARY INFORMATION:

Authority: This study is being conducted under the authority of the Buffalo Metropolitan Area Study (Lower Tonawanda Creek).

Proposed Action: The proposed action involves channelization and/or clearing and snagging along sections of Tonawanda Creek and Ransom Creek a tributary; construction of a diversion channel; and some diversion of high flows to the Erie Barge Canal.

Alternatives: The U.S. Army Corps of Engineers, Buffalo District has investigated concerns and potential alternative measures for the lower Tonawanda Creek and tributaries. Twelve alternative plans including: no-action, non-structural, clearing and snagging, channelization, berm/levees, and diversion measures were developed and evaluated for engineering and economic feasibility, environmental and social acceptability, and overall in best meeting developed project objectives. The proposed plan is considered to be the plan which best meets the developed planning objectives. Study findings will be presented in the ensuing reports.

Scoping Process: Study activities are coordinated with government agencies, interest groups, and the general public. The general intent is to gain assistance in: identifying and scoping problems, needs, and concerns; developing feasible alternative solutions; and in assessing, evaluating, and identifying prefered and selected plans. The study public involvement process incorporates written correspondence, telephone communications, public meetings/workshops, and draft and final report review procedures.

An initial local scoping meeting for this project was conducted in November of 1987. Additional initial scoping letters for this project were coordinated with agencies and interest groups known to have an interest in the project in December of 1988 and January of 1989. Several subsequent workshops and additional correspondence have followed. A public workshop is planned for June of 1989. Additional scoping input from potentially affected Federal, State, and local agencies or interests is invited by this notice.

Significant issues to be analyzed in depth in the DEIS include: flooding problems, flood damage reduction measures, and potential impacts of the most feasible measure upon the natural

and human environment—to include: water quality, fish and wildlife (aquatic, wetland, riparian, terrestrial habitat), community and regional growth, aesthetics, farmland, and cultural resources.

The study shall be conducted to comply with the various Federal and State Environmental Statutes and Executive Orders and associated review procedures. When the Feasibility Report and accompanying DEIS are completed for review, the combined document will be filed with the U.S. Environmental Protection Agency to be coordinated and reviewed under the National Envorinmental Policy Act procedures.

Scoping Meeting: Since Federal, State, and local interests have been involved during formulation of the proposed project and adequate coordination is already being conducted, no further formal scoping meeting is anticipated.

Availability: The combined document consisting of the Draft Feasibility Report and Draft Environmental Impact Statement will be made available to the public about April 1990.

Date: May 31, 1989.

Hugh F. Boyd III,

Colonel, U.S. Army Commanding.

[FR Doc. 89-14494 Filed 6-19-89; 8:45 am]

BILLING CODE 3710-GP-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER 89-479-000 et al.]

Nevada Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 13, 1989.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Company

[Docket No. ER89-479-000]

Take notice that on June 2, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Interconnection Agreement Between Nevada Power Company and Lincoln County District No. 1 (Lincoln) hereinafter the "Agreement." The primary purpose of the Agreement is to establish the terms and conditions for the interchange of economy, emergency, and banked energy and for other power transactions that may be possible through the Parties' interconnected systems or through the systems of third Parties.

Nevada states that copies of the filing were served upon Lincoln.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas City Power & Light Company

[Docket No. ER89-477-000]

Take notice that on June 2, 1989, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 1 to Municipal Participation Agreement, between KCPL and the City of Ottawa, Kansas dated May 3, 1989. KCPL states that the Amendatory Agreement provides for an extension of the contract term and a modified rate design for firm power service.

KCPL requests an effective date of June 1, 1989, and therefore requests waiver of the Commission's notice requirements.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Nevada Power Company

[Docket No. ER89-478-000]

Take notice that on June 2, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Interconnection Agreement Between Nevada Power Company and City of Boulder City, Nevada (Boulder) hereinafter the "Agreement." The primary purpose of the Agreement is to establish the terms and conditions for the interchange of economy, emergency, and banked energy and for other power transactions that may be possible through the Parties' interconnected systems or through the systems of third Parties.

Nevada states that copies of the filing were served upon Boulder.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of Oklahoma

[Docket No. ER89-476-000]

Take notice that on June 2, 1989, Public Service Company of Oklahoma ("PSO") tendered for filing a Transmission Service Agreement (the "Agreement") between KAMO Electric Cooperative, Inc. ("KAMO") and PSO. PSO proposes that the Agreement be made effective as of June 1, 1989 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing have been sent to the Oklahoma Corporation Commission and to KAMO.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Delmarva Power & Light Company

[Docket No. ER89-473-000]

Take notice that on June 2, 1989, Delmarva Power & Light Company ("Delmarva") tendered for filing proposed Supplement No. 4 to its FERC Rate Schedule No. 38. This Supplement, filed at the request for The City of Dover, Delaware ("Dover"), provides for an additional point of 138 kV interconnection south of College Road adjacent to the Conrail Railroad.

Copies of this filing were served upon The City of Dover, the Mayor of the City of Dover and Delaware Public Service Commission.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Power & Light Company

[Docket No. ER89-474-000]

Take notice that on June 1, 1989 Pennsylvania Power & Light Company (PP&L) tendered for filing a Supplement, dated as of the 31st day of May, 1989 ("Second Supplemental Agreement"), to Capacity and Energy Sales Agreement, dated as of the 28th day of January 1988 ("Basic Agreement"), supplemented by an Agreement dated as of the 10th day of August, 1988 ("First Supplemental Agreement") between PP&L and Baltimore Gas and Electric Company (BG&E). The Basic Agreement, as supplemented, is on file with the Commission as the Company's Rate Schedule FERC No. 92.

The Second Supplemental Agreement provides that, beginning June 1, 1989, PP&L will transfer to BG&E 200 MW of Supplemental Daily Generating Capacity Megawatts for use by BG&E in PJM Interconnection accounted-for installed capacity accounting. In addition, it reflects a recent increase in the PJM installed capacity rate, used for certain billings under the Agreement.

Copies of the filing were served upon BG&E, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Public Service Company

[Docket No. ER89-481-000]

Take notice that on June 5, 1989, Southwestern Public Service Company (Southwestern) tendered for filing an extension to the Experimental Interruptible Irrigation Rider applicable to three of its full requirements customer's FERC Electric Service Tariffs, specifically Bailey County

Electric Cooperative Association (FERC Rate Schedule No. 86), South Plains Electric Cooperative, Inc. (FERC Rate Schedule No. 96) and Roosevelt County Electric Cooperative, Inc. (FERC Rate Schedule No. 95).

In 1986, Southwestern Bailey County Electric Cooperative Association (Bailey) and South Plains Electric Cooperative, Inc. (South Plains) determined that an experimental interruptible service rider may be beneficial to all parties and that a one-year experiment to test the efficacy of an interruptible rate was appropriate. These two riders have been subsequently extended through 1988. In 1988, a rider was implemented for Roosevelt County Electric Cooperative, Inc., (Roosevelt). Presently, Southwestern wishes to extend these three experimental riders for another year.

Copies of the filing were served upon Bailey County, South Plains, Roosevelt, the Public Utility Commission of Texas, and the New Mexico Public Service Commission.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Utah Power & Light Company

[Docket No. ER89-480-000]

Take notice that on June 5, 1989, Utah Power & Light Company (Utah) tendered for filing a Notice of Cancellation between Strawberry Water Users Association and Utah Power & Light Company.

Utah requests that the notice requirements of 18 C.F.R. § 35.3 be waived as provided in 18 C.F.R. § 35.11, and that the Notice of Cancellation be made effective retroactively as of October 1, 1987, the date service was terminated.

Copies of this filing were served on Strawberry Water Users Association and the Utah Public Service Commission.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14532 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1474-000 et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

June 13, 1989.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP89-1474-000]

Take notice that on May 22, 1989, K N Energy, Inc., (K N) P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP89-1474-00 a request pursuant to sections 7(b) and 7(c) of the Commission's Regulations under the Natural Gas Act, as amended for authorization to relocate, abandon, construct, and operate certain facilities and to make a sale for resale of natural gas to The City of Colorado Springs, Colorado (The City), all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes to sell up to 42,500 Mcf per day of gas to The City and to deliver the gas from its pipeline system to Colorado Interstate Gas Company for The City's account. These purchases would be used to supplement The City's general system supply for service to its existing customers, it is asserted.

Specifically, K N explains that in order to make the proposed sale, it would install two 0.5 mile segments of 12-inch pipeline, relocate an existing 600-hp compressor unit, install a new 600-hp compressor unit, and install various measurement and appurtenant facilities.

Comment date: July 5, 1989 in accordance with Standard Paragraph F at the end of the notice.

2. Transcontinental Gas Pipe Line Corporation

Docket No. CP89-1591-000]

Take notice that on June 9, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1591-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Chevron U.S.A., Inc. (Chevron), under the blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated March 20, 1989, under its Rate Schedule IT, it proposes to transport up to 45,000 dekatherms (dt) per day equivalent of natural gas for Chevron. Transco states that it would transport the gas from a receipt point located offshore Louisiana, and would deliver the gas to various delivery points in Louisiana, Alabama, Georgia and New Jersey.

Transco advises that service under Section 284.223(a) commenced May 5, 1989, as reported in Docket No. ST89-3745-000. Transco further advises that it would transport 5,000 dt on an average day and 1,825,000 dt annually.

Comment date: July 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1593-000]

Take notice that on June 9, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1593-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to proivde an interruptible transportation service for Enron Gas Marketing, Inc. (Enron), under the blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated March 9, 1989, under its Rate Schedule IT, it proposes to transport up to 68,000 dekatherms (dt) per day equivalent of natural gas for Enron. Transco states that it would transport the gas from various receipt points located offshore Texas and would deliver the gas to a delivery point also located offshore Texas.

Transco advises that service under Section 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3665-000. Transco further advises that it would transport 25,000 dt on an average day and 9,125,000 dt annually.

Comment date: July 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14533 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1494-000 et al.]

Panhandle Eastern Pipe Line Co. et al.; Naural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1494-000]

June 12, 1989.

Take notice that on May 23, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1494-000 a request, as supplemented on June 7, 1989, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform a firm transportation service for the Village of Westville, Illnois (Westville), a local distribution company, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated April 1, 1989, it proposes to transport on a firm basis up to 1,916 dt equivalent of natural gas per day for Westville from specified receipt points located in Custer and Dewey Counties, Oklahoma to a specified delivery point in Vermilion County, Illinois. Panhandle also states that Westville may nominate quantities from interruptible points of receipt on Panhadle's system as long as the sum of the volumes nominated from such interruptible points together with the sum of the quantities nominated from firm points of receipt shall not exceed the contract quantity of the transportation agreement for service under Rate Schedule PT. It anticipates transporting on a peak and average day 1,916 dt equivalent of natural gas and 699,340 dt equivalent of natural gas on an annual basis.

It is stated that on April 1, 1989, Panhandle commenced a 120-day transportation service for Westville under § 284.223(a) as reported in Docket No. ST89-3182-000. Panhandle proposes to charge the rates and abide by the terms and conditions of its Rate Schedule PT. Panhandle further states that no facilities need be constructed to implement the service. It is also indicated that Panhandle would provide the service for a term expiring ten years from the initial date for service and thereafter until terminated by either Panhandle or Westville upon at least six months prior notice to the other.

Comment date: July 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP89-1555-000]

June 13, 1989.

Take notice that on May 30, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1555-000 a request, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide interruptible transportation service on behalf of Amoco Production Company (Amoco), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Pursuant to a gas transportation agreement dated July 21, 1988, United proposes to transport up to 51,500 MMBtu of natural gas per day, on an interruptible basis, for Amoco. United states that such gas would be transported from various existing receipt points along its system in Texas to various existing delivery points in Louisiana, Mississippi and Texas. Amoco has informed United that it expects to have the full 51,500 MMBtu transported on an average day and, based thereon, estimates that the annual transportation quantity would be 18,797,000 MMBtu. United advises that the transportation service commenced on March 1, 1989, as reported in Docket No. ST89-3552-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: July 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company Division of Enron, Corp.

[Docket No. CP89-1584-000]

June 13, 1989.

Take notice that on June 7, 1989, Northern Natural Gas Company Division of Enron Corp. (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1584-000 a request pursuant to

§§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide transportation service for Hunt Oil Company (Hunt), a gas producer, under Northern's blanket transportation certificate issued in Docket No. CP86–435–000 on December 22, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes, pursuant to a transportation agreement dated May 1, 1989, to transport natural gas for Hunt from a receipt point in Pecos County, Texas, and deliver the gas to West Texas Utilities, for the account of Hunt, also in Pecos county, Texas. Northern states that it proposes to transport up to 4,000 MMBtu of gas on a peak day and approximately 3,000 MMBtu and 1,460,000 MMBtu of gas on an average day and annually, respectively. Northern states that transportation service under § 284.223(a) commenced on May 1, 1989, as reported in Docket No. ST89–3708–000 on May 31, 1989.

Comment date: July 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Stingray Pipeline Company

[Docket No. CP89–1574–000]

June 13, 1989.

Take notice that on June 5, 1989, Stingray Pipeline Company, (Stingray), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP89–1574–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Entrade Corporation (Entrade), a marketer, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that pursuant to a Transportaiton Agreement dated March 23, 1989 between Stingray and Entrade (Transportation Agreement), it proposes to transport 250,000 dt per day on an interruptible basis on behalf of Entrade. The Transportation Agreement provides for Stingray to receive gas from various existing points of receipt on its system. Stingray will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY–NGL Plan located in Cameron Parish, Louisiana and Stingray—HIOS Exchange (EHI–A330) located offshore Texas

Stingray advises that service under § 284.223(a) commenced April 18, 1989, as reported in Docket No. ST89–3602. Stingray further states that it would transport on an average day 75,000 dt and 27,375,000 dt annually.

Comment date: July 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP89–1587–000]

June 13, 1989.

Take notice that on June 8, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1587–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amoco Production Company (Amoco), a producer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated March 25, 1988, as amended August 9, 1988, under its Rate Schedule ITS, it proposes to transport up to 400,000 MMBtu per day equivalent of natural gas for Amoco. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from multiple receipt points in Oklahoma, Texas, Offshore Texas, Illinois, Louisiana, Offshore Louisiana, Iowa, New Mexico, Missouri, Kansas, Arkansas, Nebraska and Wyoming, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas to multiple delivery points in Texas, Illinois, Louisiana, Oklahoma, New Mexico and Nebraska, as shown in Exhibit "B" of the agreement.

Natural advises that service under § 284.223(a) commenced April 5, 1989, as reported in Docket No. ST89–3846–000. Natural further advises that it would transport 100,000 MMBtu on an average day and 36,500,000 MMBtu annually.

Comment date: July 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–14534 Filed 6–19–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP89–36–000]

Utah Department of Natural Resources; Preliminary Findings on Incomplete Notices of Well Category Determinations

June 9, 1989

The Utah Department of Natural Resources (Utah) notified the Commission of affirmative determinations under section 503 of the Natural Gas Policy Act of 1978 (NGPA) [1] for gas from two wells operated by different producers. One applicant, Del-Rio Resources, Inc. (Del-Rio), applied for a new onshore well category determination under section 102(c) of the NGPA for its Agency Draw #23–24 well located in Uintah County, Utah. On November 6, 1984, the Commission received notice from Utah concerning the Del-Rio well and assigned the notice FERC No. JD85–05181. The other applicant, Belco Development Corporation, now Enron Oil and Gas Company, applied for a "stripper well" determination under section 108 of the NGPA for its Natural Buttes Unit #43–36B well also located in Uintah County, Utah. On August 18, 1986, the Commission received notice of determination for the Natural Buttes well and assigned it FERC No. JD86–31316.

Under § 275.202 of the Commission's regulations, a well category determination becomes final 45 days after the date on which the Commission receives notice of the determination if the Commission takes no action with respect to the notice. 18 CFR

[1] 15 U.S.C. 3413 (1982).

275.202(a)(1988). However, § 275.202(b) provides that the 45-day period for Commission review does not begin if the Commission notifies the jurisdictional agency, the purchaser, and all parties that the notice is incomplete. 18 CFR 275.202(b)(2988). Within 45 days of receiving each notice of determination, the Commission advised Utah and each applicant that the notice was incomplete.[2] The Commission explained that the notices did not include all of the information required to complete the application [3] nor did it include an explanatory statement sufficient to enable a person examining the notice to ascertain the basis for the determination. On May 10, 1988, the Commission sent a follow-up letter to Utah and the applicants advising that if the required information was not received the Commission could reverse the determinations and noted that refunds could be due. The required information has not been furnished and thus the determinations have not become final.

Under § 275.202(a), 18 CFR 275.202(a)(1988), the Commission may, before any determination becomes final, make a preliminary finding that the determination is not supported by substantial evidence in the record. Based on the foregoing facts and circumstances, the Commission hereby makes a preliminary finding that the subject determinations submitted by Utah are not supported by substantial evidence. Any state or federal agency or any person may within 30 days after issuance of a preliminary finding, submit written comments and may request an informal conference with the Commission pursuant to § 275.202(f) of the regulations, 18 CFR 275.202(a)(1988).

The Commission Orders

(A) Under § 275.202(a) of the Commission's regulations, the Commission finds that the two affirmative notices of determination (JD No. 85–05181 and JD No. 86–31316) submitted by Utah are not supported by substantial evidence in the record on which the determinations were made.

(B) Within 30 days from the date of this order, Utah, Del-Rio Resources, Inc., Enron Oil and Gas Company, or any other interested party may submit comments or request an informal conference with Commission staff.

[2] The Commission issued its tolling letter to Utah and the applicants on December 20, 1984, and September 18, 1986, respectively.

[3] The filing requirements for applications for determination are contained in Subpart B of Part 274 of the regulations.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–14491 Filed 6–19–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM89–3–1–000]

Alabama-Tennessee Natural Gas Co.; Proposed Change in FERC Gas Tariff

June 13, 1989.

Take notice that on June 7, 1989, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing Substitute Second Revised Sheet No. 4A to its FERC Gas Tariff, First Revised Volume No. 1. Such tariff sheet is proposed to become effective July 1, 1989.

Alabama-Tennessee states that the filing is to adjust the currently effective take-or-pay surcharge rates to its customers to reflect increases in the amount being billed to by Tennessee Gas Pipeline Company. Alabama-Tennessee asserts that the allocation methodology utilized is that approved by the Commission in Docket Nos. RP88–205–001 and TM89–1–1–000. Alabama-Tennessee further states that such filing is being made pursuant to § 26.1(a) of its tariff.

Alabama-Tennessee states it is amortizing the increased take-or-pay costs over a thirty-six (36) month period. According to Alabama-Tennessee, that is the maximum amortization period allowed by this Commission in FERC Docket No. RP88–191.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspections.

Lois D. Cashell,

Secretary.

[FR Doc. 89–14527 Filed 6–19–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–6–4–001]

Granite State Gas Transmission, Inc.; Compliance Tariff Filing

June 13, 1989.

Take notice that on June 7, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing Substitute Twenty-Sixth Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness May 1, 1989.

According to Granite State, the revised rates are submitted in compliance with a condition in a Letter Order, dated May 31, 1989, accepting an out-of-cycle purchased gas cost adjustment filed on May 1, 1989. Granite State further states that the revised rates are applicable to jurisdictional sales services rendered to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc.

It is further stated the May 1, 1989 out-of-cycle purchased gas cost adjustment filing reflected costs for the purchase of Rate Schedule CD–6 gas from Tennessee Gas Pipeline Company (Tennessee) for storage injections by its customers because of concerns for Tennessee's authority to transport third party gas for storage. Following the filing, the Commission resolved the third party gas issue in approving an interim settlement in Tennessee's rate proceeding, Docket No. RP88–228–000, *et al.*, according to Granite State. The Letter Order of May 31, 1989, accepting the out-of-cycle filing directed Granite State to refile its rates to reflect the changed circumstances following the Commission's approval of the interim settlement.

According to Granite State, copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc. and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and

Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before June 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14528 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-7-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

June 13, 1989.

Take notice that on June 7, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission Twenty-Seventh Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on July 1, 1989.

According to Granite State, the revised rates reflect projected gas costs for the third quarter of 1989 and are applicable to jurisdictional sales services rendered to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc.

Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14529 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-43-000]

Hilliard Oil & Gas, Inc. v. Southern Natural Gas Co.; Complaint

June 15, 1989.

On May 15, 1989, Hilliard Oil & Gas, Inc. (Hilliard) filed a complaint pursuant to 18 CFR 271.1105(d)(3)(ii) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Hilliard requests that the Production-Related Costs Board (Board) determine whether the Adema Realty #1 and C.V. Fox #1 wells meet the "Commingling Rule".

Hilliard states that by invoice dated January 3, 1989, Southern Natural Gas Company (Southern) was billed $167,763.61 for production-related costs due under a contract dated September 25, 1981, covering the Adema Realty #1 and C.V. Fox #1 wells located in Plaquemines Parish, Louisiana. Hilliard claims that Southern in a March 15, 1989 letter stated that these two wells do not qualify under the "Commingling Rule". Hilliard states that Southern agrees that the wells meet all the qualifications with the exception of the "Commingling Rule".

Hilliard asserts that the Commission has stated in the preamble to the interim rule that the gas must be delivered to a point where entry causes commingling with "other gas". Hilliard further asserts that the term "other gas" means any gas other than the gas from a single well or separator and that "other gas" includes the gas delivered from other wells and the gas in a purchaser's main line. Hilliard contends that a single-well delivery line to the final first sale location at which point the gas from that well is combined with gas from other wells, or to a point in the pipeline's main line, qualifies a first seller for the allowance; and that the seller has performed a gathering or delivery function and incurred costs doing so, before the gas transfer for value to the buyer. Hilliard states that it believes the subject wells qualify under the "Commingling Rule".

Hilliard requests that the Board issue an order finding that the Adema Realty #1 and the C.V. Fox #1 wells meet the Commingling Rule and that the invoice of $167,713.61 is payable under FERC Rules and Regulations.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Southern must file an answer to Hilliard's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Southern shall file its answer with the Commission not later than 15 days after publication of this notice in the Federal Register.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the Federal Register. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14536 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4706-000]

Northern States Power Co.; Withdrawal of Application for License

June 13, 1989.

Take notice that Northern States Power Company, applicant for the proposed Hatfield Project No. 4706, has requested that its application for license be withdrawn. The application was filed on May 21, 1981, and is currently competing with the application for license for Project No. 4098-001 filed by Wisconsin Public Power, Inc. and the City of Black River Falls, Wisconsin.

The applicant filed the request on December 22, 1987, and the acceptance of the withdrawal of its application for license for Project No. 4706 shall be effective with the issuance of this notice.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14535 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-137-003]

Northwest Pipeline Corp.; Compliance Filing

June 13, 1989.

Take notice that on May 30, 1989, Northwest Pipeline Corporation (Northwest) filed certain revised tariff sheets to its FERC Gas Tariff, to be effective April 1, 1989.

Northwest states that this filing is in compliance with the Commission's order of April 28, 1989, and supports its March 31, 1989 filing, as corrected on May 19, 1989, to recover take-or-pay buyout and buydown costs associated with supplier settlements.

Northwest states that this filing, excluding the confidential portion, is being served on all parties. Northwest states that the confidential portion of its filing contains proprietary and confidential information that could cause Northwest substantial competitive harm if publicly disclosed. Accordingly, Northwest states that Item No. 5 of its submission (related to take-or-pay exposure by settlement year) is submitted only for inclusion in its confidential Volume No. II for confidential treatment under § 388.112 of the Commission's regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before June 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14530 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-40-000]

Raton Gas Transmission Co.; Filing

June 13, 1989.

Take notice that on June 8, 1989, Raton Gas Transmission Company (Raton) filed Thirteenth Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1989.

Raton states that this filing is made to track supplier, Colorado Interstate Gas Company (CIG) filing to incorporate changed Demand Charges and Cost Allocations required by FERC orders. The filing reflects a Demand Charge decrease of one cent per MCF and Commodity Charge decrease of 0.43 cents per MCF

Raton states that a copy of this filing has been mailed to its two customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988). All such motions or protests should be filed on or before June 20, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14531 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3604-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740).

DATE: Comments must be submitted on or before July 20, 1989.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Survey of Private Sector Radon Reduction Contractors (EPA ICR # 1418) (New collection).

Abstract: This canvass of radon reduction contractors will collect information on technologies being employed for radon reduction in structures as well as the use, effectiveness, and cost of the techniques. EPA will communicate the results of this survey to States, radon reduction contractors, and the public. EPA will use these data to improve and target its radon reduction programs.

Burden Statement: The estimated average public burden for this collection of information is 2 hours per response per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions and gathering the data needed.

Respondents: Radon reduction contractors.

Estimated No. of Respondents: 1360.

Estimated Total Annual Burden on Respondents: 2,720 hours.

Frequency of Collection: One time only.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Date: June 9, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-14582 Filed 6-19-89; 8:45 am]

BILLING CODE 6560-50-M

[FRI-3603-9]

Science Advisory Board; Executive Committee Open Meeting—July 17-18, 1989

Under Pub. L 92-463, notice is hereby given that the Executive Committee of the Science Advisory Board (SAB) will meet on July 17 from 8:30 a.m. to 5:00 p.m. and on July 18 from 8:30 a.m. to 3:00 p.m. in the U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC. North Conference Center, Room #3.

The purpose of the meeting is to enable the Executive Committee to act on reports from its subcommittees and standing committees that have been completed since the last meeting and receive status reports from each of the committees. In addition, the SAB will be

given an update on the Agency's request for advice in the areas of relative risk reduction. The Board will engage in extended discussion about the current and future mission and functions of the SAB.

The meetings are open to the public. Any member of the public wishing to attend should notify Joanna Foellmer or Dr. Donald G. Barnes, Director, Science Advisory Board, at 202–382–4126 by July 13, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

Date: June 13, 1989.

[FR Doc. 89–14583 Filed 6–19–89; 8:45 am]

BILLING CODE 6560–50–M

(FRL–3604–4)

Availability and Review of Proposed Consent Decree and Enforcement Agreement; Ocean Dumping of Sewage Sludge

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and review.

SUMMARY: EPA announces the availability of a proposed judicial consent decree and enforcement agreement (Agreement) for public review and comment in accordance with the requirements of the Ocean Dumping Ban Act of 1988.

EPA has received a complete application from Nassau County Department of Public Works for issuance of a special permit to transport and dispose of sewage sludge under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1401. In conjunction with preparing permit conditions for this applicant and making a tentative determination to issue the permit for a term ending on March 17, 1991, EPA has drafted this Agreement to ensure that the applicant aggressively pursues the implementation of alternative disposal methods as required by the Ocean Dumping Ban Act. Nassau County has accepted this Agreement, and EPA has accepted its cessation schedules.

DATE: Comments must be received on or before July 11, 1989.

ADDRESSES: Send comments to: Bruce Kiselica, Chief, Ocean Dumping Task Force, EPA, Region II, 26 Federal Plaza, Room 813, New York, New York 10278–0090.

This proposed Agreement is available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Bruce Kiselica, Chief Ocean Dumping Task Force, EPA, Region II, 26 Federal Plaza, Room 813, New York, New York 10278–0090, (212) 264–5693.

SUPPLEMENTARY INFORMATION: The Ocean Dumping Ban Act of 1988 (the Act) amends the Marine Protection, Research, and Sanctuaries Act (MPRSA) regarding cessation of ocean disposal of sewage sludge. The Act establishes a framework for ending the ocean disposal of sewage sludge and prohibits the dumping of sewage sludge after August 14, 1989 unless the applicant has received a permit and has entered into an Agreement with EPA and the State in which the dumper is located that includes a schedule to end the dumping. The Act makes it unlawful to ocean dump sewage sludge after December 31, 1991. It requires that EPA report to Congress annually on the progress being made in implementing the schedules to end ocean disposal.

Ocean disposal of municipal sewage sludge has occurred since the 1920's. The dumping has occurred at the proposed site designated by EPA, the Deepwater Municipal Sludge Dump Site (the "106-Mile Site"), since March 17, 1986. Previous ocean dumping permits, allowing disposal at the 12-Mile Site, expired on January 9, 1981. Nassau County and all other municipal sewage sludge dumpers are currently using the Deepwater Municipal Sludge Dump Site pursuant to the Judicial Decrees entered as a result of the 1982 final judgment in *City of New York* v. *EPA*, 543 F. Supp. 1084 (1981).

Alternative disposal methods to ocean disposal include incineration, recycling operations, and landfilling. The Act mandates that the applicants implement land-based alternatives. However, such alternatives are not immediately available to the County. For the term of the proposed permit, and beyond if necessary, Nassau County shall aggressively pursue the implementation of alternative disposal methods under this separate proposed Agreement with EPA and the State of New York. In fact, the County and State must enter into such an Agreement with EPA prior to obtaining a permit.

As required by the Act, the proposed Agreement includes schedules with key milestone dates for the implementation of alternatives to ocean dumping, including interim disposal measures as necessary, reporting requirements for monitoring implementation progress, and provisions for payment of ocean dumping fees/penalties. In addition, the proposed Agreement provides for payment of stipulated penalties by the applicant for any violation of the Agreement.

Regarding the specific interim schedules for ceasing ocean disposal and long term schedules for implementing final alternatives to ocean disposal, Nassau County has developed the following plans as part of this Agreement. The County proposed to dewater an out-of-state landfill or use a private vender on an interim basis. It is investigating the full range of sludge management alternatives for use on a long term basis. Nassau County proposes to implement its plans by the following dates:

Interim plan	Long term plan
50%—6/30/91 (phase-out) 100%—12/31/91 (cessation)	12/31/94

The Act established fees for ocean disposal prior to the Decembr 3, 1991 deadline and civil penalties for dumpers who continue dumping after the deadline. The fees are $100, $150, and $200 for each dry ton dumped in 1989 after August 14th, in 1990, and in 1991, respectively. The penalties increase each year starting from $600 per dry ton in 1992. Eighty-five percent of the fees and a portion of the penalties, beginning with 90% in 1992 and declining by 5% each year thereafter, must be deposited in trust accounts to be established by the dumpers. A portion of the remaining funds ($15) goes to EPA, the U.S. Coast Guard, and the National Oceanic and Atmospheric Administration to cover the coss of administering the Act, including the conducting of a monitoring program. Any further available funds go to New York State for specified activities.

The trust account can be used by Nassau County, with EPA's approval, to implement alternatives to ocean disposal. Funds remaining in the trust account after the dumper has ceased dumping are returned to the County to be used for compliance with the Clean Water Act and for reducing debt incurred for compliance, including operations and maintenance costs, with this Act and the Clean Water Act.

New York State is required to make available ten percent of the capitalization grant payments made to it in FY–1990 and 1991 for its State revolving fund under the Federal Water Pollution Control Act and ten percent of the associated State matching funds to

assist its ocean dumpers in finding and implementing alternatives to dumping.

The proposed judicial consent decree and enforcement agreement may be inspected, and arrangements made for copying at the above office between 9:00 a.m. and 4:00 p.m., Monday through Friday, except federal holidays. The file supporting the related proposed permits required under the Marine Protection, Research, and Sanctuaries Act is also available for public inspection at the above address. The proposed permits were similarly available during a separate comment period, which closed on April 28, 1989.

Dated: June 14, 1989.

William J. Muszynski, P.E.,

Acting Regional Administrator for Region II.

[FR Doc. 89-14566 Filed 6-19-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

Filing Dates for Florida Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Florida special election.

SUMMARY: Florida has scheduled special elections in the 18th Congressional District to fill the seat that was held by the late Representative Claude Pepper. There are three possible special elections, but only two may be necessary.

- Primary Election: August 1, 1989.
- Possible Runoff Election: August 15, 1989. If no candidate wins a majority of votes in his/her party's primary, the two top vote-getters in that party's primary will participate in a runoff election.
- General Election: August 29, 1989

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: Principal campaign committees of candidates who participate in these Florida Special elections must file reports according to the schedules given in charts 1 through 4. The committee treasurer should consult the chart that corresponds to the candidate's situation. Party committees and PACs that make contributions or expenditures in connection with the special elections during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not file special pre- and post-election reports.

CALENDAR OF REPORTING DATES FOR FLORIDA SPECIAL ELECTION

Report	Period covered	Reg./cert. mailing date [1]	Filing date
Chart 1: Committees involved in only the Special Primary (8/1/89):			
Pre-Primary and Mid-Year [2]	[3]-07/12/89	07/17/89	07/20/89
Year-End	07/13/89-12/31/89	01/31/90	01/31/90
Chart 2: Committees involved in *only* the Special Primary (8/1/89) and Special General (8/29/89):			
Pre-Primary and Mid-Year [2]	[3]-07/12/89	07/17/89	07/20/89
Pre-General	07/13/89-08/09/89	08/14/89	08/17/89
Post-General	08/10/89-09/18/89	09/28/89	09/28/89
Year-End	09/19/89-12/31/89	01/31/90	01/31/90
Chart 3: Committees involved in *both* the Special Primary (8/1/89) and Special Runoff (8/15/89):			
Pre-Primary and Mid-Year [2]	[3]-07/12/89	07/17/89	07/20/89
Pre-Runoff	07/13/89-07/26/89	[4] 08/03/89	08/03/89
Year-End	07/27/89-12/31/89	01/31/90	01/31/90
Chart 4: Committees involved in the Special Primary (8/1/89), Special Runoff (8/15/89) and Special General (8/29/89)			
Pre-Primary and Mid-Year [2]	[3]-07/12/89	07/17/89	07/20/89
Pre-Runoff	07/13/89-07/26/89	[4] 08/03/89	08/03/89
Pre-General	07/27/89-08/09/89	[5] 08/17/89	08/17/89
Post-General	08/10/89-09/18/89	09/28/89	09/28/89
Year-End	09/19/89-12/31/89	01/31/90	01/31/90

Note: If no candidate achieves a majority of the vote in his/her party's Special Primary Election, the top two vote getters from that party's primary go to a Special Runoff Election.

[1] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.
[2] Commitees may file a consolidated Pre-Primary and Mid-Year Report, provided the report is filed by 7/20/89.
[3] The close of books of the last report filed or the date of the committee's first activity, if no previous reports filed.
[4] Committees involved in the Runoff Election may use the August 3 filing date as the mailing date for their Pre-Runoff Report.
[5] Committees involved in the Runoff and General Elections may use the August 17 filing date as the mailing date for their Pre-General Report

Dated: June 13, 1989.

Lee Ann Elliott,

Vice-Chairman, Federal Election Commission.

[FR Doc. 89-14500 Filed 6-19-89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Listing of Controlled Carriers Under the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Amendments to List of Controlled Carriers.

SUMMARY: The Federal Maritime Commission has removed Neptune Orient Lines and Empresa Maritima del Estado from the list of controlled carriers. Information received by the Commission indicates that they no longer meet the definition of a controlled carrier pursuant to section 3(8) of the Shipping Act of 1984. Also, the Commission is adding Tientsen Marine Shipping Company, Chu Kong Shipping Co., Ltd., and Societe Nationale Malgache de Transports Maritimes to the list of controlled carriers, subject to the advance tariff filing and other regulatory requirements of section 9 of the Shipping Act of 1984.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 25073, (202) 523-5740.

SUPPLEMENTARY INFORMATION: Sections 3 (8) and 9 of the Shipping Act of 1984

("1984 Act"), 46 U.S.C. app. 1702(8) and 1708, provide for the identification and regulation of certain state-controlled carriers operating in the waterborne foreign commerce of the United States. The Commission has determined to delete Neptune Orient Lines ("NOL") and Empresa Maritima, formerly named Empresa Maritima del Estado ("Empremar"), from the list of controlled carriers, because they no longer meet the definition of a controlled carrier set forth at section 3(8) of the 1984 Act.

Information was submitted to the Commission that the Government of Singapore's ("GOS") ownership interest in NOL has been reduced from 100 percent to 47.23 percent as of January 31, 1989, pursuant to a government privatization program. It was reported that, as a result of the state ownership changes, the GOS neither elects a majority of NOL's board of directors, nor controls the appointment of its chief executive officer. The Commission has determined that, because GOS neither owns a majority interest in NOL nor has the right to appoint or disapprove the appointment of a majority of its directors, or its chief executive officer, NOL no longer meets the definition of a controlled carrier and is, therefore, being deleted from the list of controlled carriers.

Empremar submitted information establishing that, although it is owned and controlled by the Government of Chile, it does not operate any vessels under Chilean registry. Further, Empremar reported that it has no plans in the future to operate any vessels under Chilean registry. The Commission determined that, because Empremar is not directly or indirectly owned or controlled by the government under whose registry its vessels operate, it does not meet the definition of a controlled carrier and is, therefore, being deleted from the list of controlled carriers.

Further, the Commission has determined that Tientsin Marine Shipping Company ("Tientsin"), Chu Kong Shipping Company, Ltd. ("Chu Kong"), and Societe Nationale Malgache de Transports Maritimes ("SMTM") meet the definition of a controlled carrier under section 3(8) of the 1984 Act, and are, therefore, being added to the list of controlled carriers.

Upon inquiry by the Commission, Tientsin responded that all of its assets and vessels are indirectly owned and controlled by the Tian Jin Municipality of the Government of the People's Republic of China. Further, it was reported that the Tian Jin Municipality appoints or disapproves the appointment of Tientsin's board of directors, managers and other principal officials. In addition, Tientsin confirmed that it operates Chinese-flag vessels.

Chu Kong responded that it is owned and controlled indirectly by the Government of the People's Republic of China. Further, Chu Kong stated that it owns and operates Chinese-flag vessels.

SMTM admitted that it meets the statutory definition of a controlled carrier. The main shareholder in SMTM is reported to be the Government of Malagasy (Madagascar). SMTM indicated that the Government of Malagasy has the right to appoint or disapprove the appointment of a majority of its directors or its chief operating officer. Further, SMTM submitted that it owns and operates vessels flying the Malagasy flag. One of the vessels operated by SMTM is reportedly owned directly by the Government of Malagasy.

The Commission's list of controlled carriers was previously published in the **Federal Register** on June 1, 1988 [53 FR 20017]. The amended list is shown below:

Baltic Shipping Co.—U.S.S.R.
Bangladesh Shipping Corp.—Bangladesh
Black Sea Shipping Company—U.S.S.R.
Black Star Line—Ghana
Ceylon Shipping Corporation—Sri Lanka
China Ocean Shipping Co.—People's Republic of China
China Resources Transportation & Godown Co., Ltd.—People's Republic of China
Chu Kong Shipping Co., Ltd.—People's Republic of China
Compagnie Maritime Zairoise—Zaire
Compagnie Marocaine de Navigation (COMANAV)—Morocco
Compagnie Nationale Algerienne de Navigation—Algeria
Companhia de Navegacao Lloyd Brasileiro—Brazil
Compania Anonima Venezolana de Navegacion (Venezuelan Line)—Venezuela
Compania Peruana de Vapores (Peruvian State Line)—Peru
Egyptian National Line—Egypt
Far East Enterprising Co. (H.K.), Ltd. (Farenco)—People's Republic of China
Far Eastern Shipping Co.—U.S.S.R.
Flota Bananera Ecuatoriana S.A.—Ecuador
Guangdong International Shipping Co., Ltd.—People's Republic of China
MISR Shipping Company—Egypt
Murmansk Shipping Co. (Arctic Line)—U.S.S.R.
National Shipping Corporation of the Philippines—Philippines
Nauru Pacific Line—Nauru
Nigerian National Shipping Line Limited—Nigeria
P.T. Djakarta Lloyd—Indonesia
Pakistan National Shipping Corporation—Pakistan
Pharaonic Shipping Co. (S.A.E.)—Egypt
Polish Ocean Lines—Poland
Romanian Shipping Company Constanta (NAVROM)—Romania
Shipping Corporation of India—India
Societe Nationale Malgache de Transports Maritimes (SMTM)—Madagascar
Sudan Shipping Line Limited—Sudan
Tientsin Marine Shipping Company—People's Republic of China
Transportes Navieros Ecuatorianos (Transnave)—Ecuador
Zhu Sheng Transportation Co., Ltd.—People's Republic of China

The process of identification and classification of controlled carriers is continuous. This list as shown will be amended as circumstances warrant.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-14554 Filed 6-19-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Cascade Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in action on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications

must be received not later than July 7, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *Cascade Bancorporation, Inc.*, Altoona, Iowa; to Acquire 90 percent of the voting shares of Wabeno Bancorporation, Inc., Altoona, Iowa, and thereby indirectly Acquire State Bank of Wabeno, Wabeno, Wisconsin.

2. *Illinois Valley Banschares, Inc.*, Elmhurst, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Colonial Trust & Savings Bank, Peru, Illinois, and thereby indirecty acquire Illinois Regional Bank, Bureau County, Princeton, Illinois.

3. *M.O.I. Inc.*, Janesville, Wisconsin; to become a bank holding company by acquiring 84.2 percent of the voting shares of State Bank of Mount Horeb, Mount Horeb, Wisconsin; and 24 percent of the voting shares of State Bank of Argyle, Argyle, Wisconsin.

4. *Wabeno Bancorporation, Inc.*, Altoona, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Wabeno, Wabeno, Wisconsin.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Interstate Bancshares, Inc., Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of interstate Bank North, Houston, Texas.

Board of Governors of the Federal Reserve System, June 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–14540 Filed 6–19–89; 8:45 am]

BILLING CODE 6210-01-M

Community National Bancorp. Inc., Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.21(a)(1) of the Board's regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound "banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Community National Bancorp, Inc.*, Staten Island, New York; to engage *de novo* through its subsidiary, Community Mortgage Corporation of New York, New York, New York, in making, acquiring, and servicing loans or other extensions of credit directly or for the account of others, such as would be made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–14541 Filed 6–19–89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Robert J. Schmillen

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *Robert J. Schmillen*, Wenona, Illinois; to increase his ownership to 20.6 percent of the voting shares of Wenona Bancorp, Inc., Wenona, Illinois, as the result of a stock redemption and thereby indirectly acquire Wenona State Bank, Wenona, Illinois.

Board of Governors of the Federal Reserve System, June 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–14539 Filed 6–19–89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F–0177]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe, increased use of ethylenebis(oxyethylene)-bis-(3-*tert*-butyl-4-hydroxy-5-methylhydrocinnamate) as a stabilizer for polyoxymethylene copolymers and homopolymers intended for food-contact use.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4147) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188, proposing

that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe, increased use of ethylenebis(oxyethylene)-bis-(3-*tert*-butyl-4-hydroxy-5-methylhydrocinnamate) as a stabilizer for polyoxymethylene copolymers and homopolymers intended for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 12, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-14560 Filed 6-19-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Announcement and Proposed Criteria for Demonstration of Joint Nursing Graduate Education Program Projects

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) in coordination with the Health Care Financing Administration (HCFA) announces its intent to implement section 8411(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647) authorizing a Demonstration of Joint Nursing Graduate Education Programs. Medicare reimbursement rules are modified to promote graduate clinical training opportunities jointly developed by hospitals and educational institutions.

This is a demonstration designed to allow a hospital to be reimbursed for reasonable costs incurred pursuant to a written agreement with an educational institution for certain activities conducted as part of an approved educational program that involves a substantial clinical component (as determined by the Secretary) and leads to a master's or doctoral degree in nursing. For the purpose of these projects, payments for costs incurred will be reimbursed on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program), or as otherwise justified, but only to the extent that such activities are directly related to the operation of the educational program conducted under the written agreement between the hospital and the educational institution. The amount paid under a demonstration project to a hospital for a cost reporting period may not exceed $200,000. Five hospitals are to be selected for participation in this Program and fiscal intermediaries will be authorized to reimburse clinical education costs for reporting periods beginning on or after July 1, 1989, and before July 1, 1994.

For the duration of the project, Medicare will reimburse for reasonable costs incurred by the sponsoring hospital in the provision of clinical experiences for graduate level nursing students at the hospital. The hospital will be required to account separately for the costs of the demonstration project. Medicare will reimburse the hospital for Medicare's share of the additional costs the hospital incurs in connection with the project under the reasonable cost authority in section 1861(v) of the Social Security Act (the Act).

In this demonstration, an emphasis is being placed on cost effectiveness of the projects. Costs are to be estimated for each of the years during which the demonstration project is conducted. The cost and the cost-effectiveness of a proposed project will be considered during the review of applications.

A report to Congress by January 1, 1995 is required on the results of these demonstration projects. Therefore, the sponsoring hospitals will be required to provide both cost-related and programmatic evaluative data on the supply and characteristics of nurses trained under the demonstrations. Sponsors of proposed projects must describe and document areas of additional educational costs associated with the project and these may be reimbursed under section 8411(a) of Pub. L. 100-647. These costs are to be estimated for each of the years of the demonstration project. Additional costs may include: Nursing student stipends; salaries of supervisors of the clinical experience provided to graduate nursing students at the hospital; travel for students and supervisors if the clinical site is remote from the educational institution and/or the hospital itself; and classroom costs. Any reimbursement requests for additional costs will require review by the Medicare intermediaries to determine the accuracy and reasonableness of the claims. Hospitals wishing to apply should note that Medicare will reimburse the hospital only for Medicare's share of the cost. The hospital will be free to seek reimbursement from other payers for costs of the demonstration related to non-Medicare patients. Sponsors are to provide prescribed programmatic data such as the number of students assisted, the nature and type of clinical experience provided, demographic characteristics of the students involved and the employment positions taken by students immediately following graduation.

This Notice invites interested persons to comment on the proposed criteria for the projects which are intended to assist hospitals to provide clinical expericence to graduate nursing students. The Notice also requests hospitals interested in entering into an agreement with the Department to notify the Health Resources and Services Administration.

DATES: (1) Written comments from interested persons must be received on or before July 20, 1989, in order to be considered.

(2) To receive consideration to enter into an agreement with the Department to conduct a demonstration project, an expression of interest must be received on or before July 20, 1989. Materials regarding entry into an agreement will be sent only to hospitals making a request.

ADDRESSES: Written comments and requests for information on entering into an agreement and other questions should be directed to: Chief, Advanced Nursing Education Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857. For more information call the Chef, Advanced Nursing Education Branch at (301) 443-6333.

Supplementary Information: On November 10, 1988, the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, was signed into law. Section 8411(a) of Pub. L. 100-647, authorizing Demonstration of Joint Nursing Graduate Education Program Projects, requires the Secretary of Health and Human Services to enter into demonstration agreements with five hospitals which currently receive payments under Medicare. Eligible hospitals may be public or private entities, non profit or for profit. These projects will begin on or after July 1, 1989 and extend through June 30, 1994, and are intended to assist hospitals to provide clinical experience for graduate nursing students. The agreements will

be entered into only after proposals for participation are received and a merit review is conducted by the Department. The review of proposals under this demonstration is not subject to the requirements of Executive Order 12372.

Under the agreements, each of the sponsoring hospitals will make arrangements with one or more contracting educational institutions to provide clinical experience for master's and/or doctoral students in those schools. The number of students, the duration of the clinical experience, the geographic location of the experience, the method of student evaluation, the nature of the clinical experience as it relates to the total curriculum, and the proposed nature of any exchange of services or monies between the hospital and the educational institution are to be a part of the written agreement between the sponsoring hospital and the contracting educational institution(s).

Section 8411(a) of Pub. L. 100–647 requires that the contracting educational institution provide an approved education program that (a) involves a substantial clinical component (as described by the Secretary) and (b) leads to a master's or doctoral degree in nursing. For purposes of these projects, a "substantial clinical component" is described as a period of directed clinical experience provided as a component of a graduate course in nursing, which is intended to prepare the graduate as a specialist in a clinical area of nursing, rather than in a functional area, such as nursing education, nursing administration or nursing research. The Secretary's Commission on Nursing has reported that the greatest nursing shortage exists in in-patient adult and critical care units in hospitals (Final Report, Vol. I, December, 1988).

Proposed Project Criteria

The Department proposes to establish the following criteria for the Demonstration of Joint Nursing Graduate Education Programs:

(1) For the purpose of this demonstration, only hospitals participating in the Medicare Program are eligible for consideration as sponsoring hospitals.

(2) Only students enrolled in a master's or doctoral program designed to prepare specialists in clinical areas of nursing would be eligible for participation in the demonstration projects. Students must be licensed to practice as registered nurses in the state in which the sponsoring hospital is located.

(3) Contracting educational institutions must be state approved schools of nursing.

(4) Only hospitals submitting cost related and programmatic evaluative data necessary to allow the Secretary to determine the cost effectiveness of the Program will be considered.

Interested persons are invited to comment on the proposed criteria for the demonstration projects. Normally, the comment period would be 60 days. However, due to the need to implement the projects as quickly as possible, the comment period has been reduced to 30 days. All comments received on or before July 20, 1989, will be considered before final project criteria are established.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted), between the hours of 8:30 a.m. and 5:00 p.m.

Dated: June 14, 1989

John H. Kelso,

Acting Administrator.

[FR Doc. 89–14555 Filed 6–19–89; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 53 FR 46944, November 21, 1988) is amended to reflect the following organizational changes within the Public Health Practice Program Office:

1. Revision of the functional statement for the *Office of the Director (HCH1).*

2. Revision of the functional statements and changes in the titles of the three Divisions.

Section HC–B, Organization and Functions, is hereby amended as follows:

After the heading and mission statement for the *Public Health Practice Program Office (HCH),* delete in their entirety the headings and functional statements for the *Office of the Director (HCH1),* the *Division of Assessment and Management Consultation (HCH2),* the *Division of Training (HCH3),* and the *Division of Technical Services (HCH4)* and substitute the following:

Office of the Director (HCH1). (1) Directs and coordinates the activities of the Public Health Practice Program Office (PHPPO); (2) develops long-range plans, sets annual objectives and monitors progress toward their achievement, and evaluates results; (3) provides leadership and scientific oversight; (4) coordinates PHPPO collaborative activities with other CDC components, other Federal agencies, States, professional societies and private health organizations, and international health organizations; (5) serves as a focal point for policy regarding the memorandum of understanding with the Health Care Financing Administration; (6) interacts with public, private, academic, and voluntary sectors of the health community to foster consensus development and adoption of public health practices and laboratory practices which are consistent with other Centers, Institute, and Offices of CDC and which provide for effective responses to the Nation's health problems; (7) along with other Centers, Institute, and Offices, serves as an advisor to the Director, CDC, in matters relating to public health systems, laboratory systems, and training communications; (8) monitors legislative interests relative to Program activities and develops initiatives consistent with public health needs; (9) establishes policies and provides guidance in support of the Program's operational needs; (10) provides administrative and support services to PHPPO.

Division of Public Health Systems (HCH5). (1) Assesses and monitors the capacity of State and local Public Health agencies to carry out their primary roles of assessment, policy development, and assurance; (2) promotes the development and adoption of performance standards for the practice of public health; (3) identifies planning, management, evaluation and training needs of State and local public health agencies and disseminates assessment results; (4) provides technical assistance, consultation, and training to improve the capacity of State and local health agencies to establish and apply effective management systems; (5) evaluates the effectiveness of PHPPO's assistance, consultation, and training efforts; (6) fosters the enhanced role of academic institutions and health centers in prevention research and the practice of public health and preventive medicine; (7) facilitates the integration of prevention research findings into health care delivery and public health practice; (8) conducts demonstration projects to strengthen the capacity of State and local health agencies to carry out their primary roles of assessment,

policy development, and assurance; (9) develops strategies which promote the transfer of effective management technology; (10) in carrying out the above functions, collaborates with other components of PHPPO and with other Centers, Institute, and Offices of CDC, and where another Center, Institute, or Office has the lead responsibility, provides support to and works in conjuction with the other Centers, Institute, or Offices.

Division of Laboratory Systems (HCH6). (1) Encourages the establishment and adoption of performance standards for laboratory practice; (2) develops, evaluates, and implements systems for measurement and assessment of laboratory quality; (3) develops, promotes, implements, and evaluates intervention strategies to correct general performance deficiencies in health laboratory systems and workers; (4) provides a forum for exchange of general information about laboratory practice and research and development activities to promote the coordination of Federal, State, and private laboratory improvement efforts; (5) facilitates and conducts research and demonstration (a) to support the scientific development of performance standards, evaluation systems, and regulatory standards, and (b) to assess the efficacy of established standards; (6) promotes, develops, and implements training needs assessment methodology to establish priorities for training interventions; (7) develops and conducts training to facilitate the timely transfer of newly emerging laboratory technology and standards for laboratory practice; (8) provides technical assistance, consultation, and training for trainers to improve the capacity and capability of regional organizations and State health agencies to develop and maintain decentralized training networks for laboratory professionals; (9) coordinates and conducts activities that provide technical and scientific support to HCFA in its evaluation, development, and revision of standards and guidelines; (10) in carrying out the above functions, collaborates with other components of PHPPO and with other Centers, Institute, and Offices of CDC, and where another Center, Institute, or Office has the lead responsibility, provides support to and works in conjunction with the other Center, Institute, or Office.

Division of Media and Training Services (HCH7). (1) Fosters the development and adoption of quality standards for CDC media and instructional products; (2) assists in the definition and analysis of training needs of public health workers, and develops and evaluates instructional products designed to meet those needs; (3) collaborates in the development of communication systems between CDC and other public health organizations; (4) designs and produces a variety of visual materials for instructional and presentational activities; (5) designs, produces, and delivers informational and instructional television products; (6) provides scientific and general photographic services; (7) manages the Self-study Instruction Program; (8) manages the inventory and distribution of selected presentational products; (9) manages the CDC learning environment through classroom and meeting support for Atlanta facilities; (10) provides conference consultation and administers the Conference Support Grant Program; (11) registers participants of laboratory and public health courses offered by PHPPO; (12) coordinates the collection, analysis, and dissemination of data on CDC's public health training activities; (13) in carrying out the above functions, collaborates with other components of PHPPO and with other Centers, Institute, and Offices of CDC, and where another Center, Institute, or Office has the lead responsibility, provides support to and works in conjunction with the other Center, Institute, or Office.

Effective Date: June 8, 1989.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 89-14564 Filed 6-19-89; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-2006]

DART Associates, Inc.; Hearing

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of hearing in the matter of DART Associates, Inc., HUDALJ 89-02-MH.

SUMMARY: A hearing pursuant to 24 CFR 3282.152(g) will commence at 9:30 a.m. on July 10, 1989 in Room 2155, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, on the Secretary of Housing and Urban Development's determination that DART Associates, Inc. will be suspended on September 1, 1989 from acting as a Production Inspection Primary Inspection Agency, pursuant to 24 CFR 3282.355(d), and, on the preliminary determination that DART Associates, Inc. should be disqualified as a Production Inspection Primary Inspection Agency pursuant to 24 CFR 3282.356(a).

FOR FURTHER INFORMATION CONTACT: Honorable Alan W. Heifetz, Administrative Law Judge, U.S. Department of Housing and Urban Development, Room 2156, 451 Seventh Street SW., Washington, DC 20410, Telephone: (202) 755-2540.

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban Development (Secretary) administers the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.* (the Act) and its regulations, 24 CFR Part 3282. Based on monitoring reports and on information available to him through the Office of Manufactured Housing and Regulatory Functions, he has determined that DART Associates, Inc. (DART) has been performing its functions as a Production Inspection Primary Inspection Agency (PIPIA) inadequately. Based upon this determination, the Secretary has suspended DART as a PIPIA effective September 1, 1989. This suspension is made pursuant to 24 CFR 3282.355(d). In addition, the Secretary has made a preliminary determination that DART should be disqualified as a PIPIA under 24 CFR 3282.356(a). Upon the request of DART, the Secretary is giving DART a Formal Presentation of Views as set out in 24 CFR 3282.152(g). Following the Presentation of Views, the Administrative Law Judge will determine whether it is appropriate to lift the suspension so that DART will remain a PIPIA or whether it is appropriate to disqualify DART. The Secretary's actions are based on his findings that DART has failed to comply with the PIPIA requirements set forth in 24 CFR 3282.353, 3282.351(b)(3), 3282.351(b)(4), 3282.358(a), 3282.362(a)(1)(i), 3282.362(a)(1)(ii), 3282.362(a)(1)(iii), 3282.362(a)(1)(v), 3282.362(b)(1) and 3282.362(c)(1).

A Presentation of Views will be held under the authority of the Act and 24 CFR Part 3282, Subpart D. The parties to this proceeding are the Secretary and DART. The purpose of this proceeding is to determine whether DART has failed to comply with the indicated regulations and whether suspension and disqualification actions are appropriate.

This Presentation of Views will be held in accordance with the provisions of 24 CFR 3282.152(g). Administrative Law Judge Alan W. Heifetz is hereby

designated as the presiding officer for the proceedings. All inquiries concerning these proceedings should be directed to Judge Heifetz. The Presentation of Views will commence at 9:30 a.m. on July 10, 1989 in Room 2155, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

In determining that the requirements of 25 CFR 3282.152(g) shall apply in this case, the Secretary has considered the factors set forth at 24 CFR 3282.152(c)(4) and the request by DART that the Presentation of Views be formal.

Further, this is an important case which may have serious economic consequences for DART, thereby justifying a formal due process hearing. This case also involves complex technical issues and differing interpretations of the HUD Standards (24 CFR Part 3280), and under such circumstances, an adversary proceeding with cross-examination and sworn testimony available under 24 CFR 3282.152(g) is appropriate. In view of these factors, the Secretary has determined that a Presentation of Views under 24 CFR 3282.152(g) is appropriate.

Interested persons may participate in writing and in the oral portion of the Presentation of Views pursuant to 24 CFR 3282.153. The presiding officer may determine that such participation should be limited or barred so as not to unduly prejudice the rights of the parties involved or unnecessarily delay the proceedings.

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

Stephen A. Martin,

Acting Deputy Assistant Secretary for Single-Family Housing.

[FR Doc. 89-14499 Filed 6-19-89; 8:45 am]

BILLING CODE 4210-27-M

[Docket No. N-89-2005]

DART Associates, Inc.; Hearing

AGENCY: Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Hearing In the Matter of DART Associates, Inc. HUDALJ 89-01-MH.

SUMMARY: A hearing pursuant to 24 CFR 3282.152(g) will commence at 9:30 a.m. on July 10, 1989 in Room 2155, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, on the Secretary of Housing and Urban Development's determination that DART Associates, Inc. will be suspended on September 1, 1989 from acting as a Design Approval Primary Inspection Agency, pursuant to 24 CFR 3282.355(d), and, on the preliminary determination that DART Associates, Inc. should be disqualified as a Design Approval Primary Inspection Agency pursuant to 24 CFR 3282.356(a).

FOR FURTHER INFORMATION CONTACT: Honorable Alan W. Heifetz, Administrative Law Judge, U.S. Department of Housing and Urban Development, Room 2156, 451 Seventh Street, SW., Washington, DC 20410, Telephone: (202) 755-2540.

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban Development (Secretary) administers the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq. (the Act) and its regulations, 24 CFR Part 3282. Based on monitoring reports and on information available to him through the Office of Manufactured Housing and Regulatory Functions, he has determined that DART Associates, Inc. (DART) has been performing its functions as a Design Approval Primary Inspection Agency (DAPIA) inadequately. Based upon this determination, the Secretary has suspended DART as a DAPIA effective September 1, 1989. This suspension is made pursuant to 24 CFR 3282.355(d). In addition, the Secretary has made a preliminary determination that DART should be disqualified as a DAPIA under 24 CFR 3282.356(a). Upon the request of DART, the Secretary is giving DART a Formal Presentation of Views as set out in 24 CFR 3282.152(g). Following the Presentation of Views, the Administrative Law Judge will determine whether it is appropriate to lift the suspension so that DART will remain DAPIA or whether it is appropriate to disqualify DART. The Secretary's actions are based on his findings that DART has failed to comply with the DAPIA requirements set forth in 24 CFR 3282.353, 3282.351(b)(1), 3282.358(a), 3282.361(a)(1), 3282.361(b)(1), 3282.361(b)(2), 3282.361(b)(3), 3282.361(b)(4) and 3282.361(c)(3).

A Presentation of Views will be held under the authority of the Act and 24 CFR Part 3282 Subpart D. The parties to this proceeding are the Secretary and DART. The purpose of this proceeding is to determine whether DART has failed to comply with the indicated regulations and whether suspension and disqualification actions are appropriate.

This Presentation of Views will be held in accordance with the provisions of 24 CFR 3282.152(g). Administrative Law Judge Alan W. Heifetz is hereby designated as the presiding officer for the proceedings. All inquiries concerning these proceedings should be directed to Judge Heifetz. The Presentation of Views will commence at 9:30 a.m. on July 10, 1989 in room 2155, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

In determining that the requirements of 24 CFR 3282.152(g) shall apply in this case, the Secretary has considered the factors set forth at 24 CFR 3282.152(c)(4) and the request by DART that the Presentation of Views be formal.

Further, this is an important case which may have serious economic consequences for DART, thereby justifying a formal due process hearing. This case also involves complex technical issues and differing interpretations of the HUD Standards (24 CFR Part 3280), and under such circumstances, an adversary proceeding with cross-examination and sworn testimony available under 24 CFR 3282.152(g) is appropriate. In view of these factors, the Secretary has determined that a Presentation Views under 24 CFR 3282.152(g) is appropriate.

Interested persons may participate in writing and in the oral portion of the Presentation Views pursuant to 24 CFR 3282.153. The presiding officer may determine that such participation should be limited or barred so as not to unduly prejudice the rights of the parties involved or unnecessarily delay the proceedings.

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

Stephen A. Martin,

Acting Deputy Assistant Secretary for Single Family Housing.

[FR Doc. 89-14498 Filed 6-19-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-09-4212-22]

Filing of Plats of Survey; Nevada

June 9, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats and Survey in Nevada.

EFFECTIVE DATES: Filings were effective at 10:00 a.m. on June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Bureau of Land Management, (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–328–6341.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on the date indicated.

Mount Diablo Meridian, Nevada

	Group No.
T. 16 S., R. 65 E.—Dependent Resurvey and Survey	638
T. 17 S., R. 65 E.—Dependent Resurvey	638
T. 17 S., R. 66 E.—Dependent Resurvey	638
T. 18 N., R. 66 E.—Dependent Resurvey	653
T. 16 N., R. 67 E.—Dependent Resurvey	653
T. 17 N., R. 67 E.—Dependent Resurvey	653

All the surveys were accepted on May 30, 1989. The surveys in Group 653 were executed to meet certain administrative needs of the Bureau of Land Management. The surveys in Group 638 were executed to meet certain administrative needs of the Bureau of Indian Affairs.

All of the above-listed surveys are now the basic record for describing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fee.

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 89–14586 Filed 6–19–89; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Official Protraction Diagrams Publication; Notice of Availability

AGENCY: Minerals Management Service.

ACTION: Publication of revised outer continental shelf official protraction diagrams.

SUMMARY: Notice is hereby given that effective with this publication, the following OCS Official Protraction Diagrams, last revised on April 27, 1989, or May 2, 1989, are on file and available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, these Official Protraction Diagrams are the basic record for the description of mineral and oil and gas lease sales in the geographic areas they represent.

REVISED MAPS [1]

Description	Latest Revision Date
Port Isabel, NG 14–6	Apr. 27, 1989.
Alaminos Canyon, NG 15–4	Apr. 27, 1989.
Keathley Canyon, NG 15–5	Apr. 27, 1989.
NG 15–8	Apr. 27, 1989.
NG 15–9	Apr. 27, 1989.
NG 16–7	Apr. 27, 1989.
Rankin, NG 16–12	May 2, 1989.

[1] Changes include relabeling of the maritime boundary, and/or wording of notes. There are no changes in block acreages or shapes.

ADDRESSES: Copies of these Official Protraction Diagrams may be purchased for $2.00 each from Public Information Unit (OPS–3–4), Minerals Management Service, Gulf of Mexico OCS Regional Office, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 (504) 736–2519.

Technical comments or questions pertaining to these maps should be directed to Office of Leasing and Environment, Supervisor, Sales and Support Unit (504) 736–2761.

Date: June 6, 1989

J. Rogers Pearcy,

Regional Director, Minerals Management Service, Gulf of Mexico OCS Region.

[FR Doc. 89–14497 Filed 6–19–89; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 10, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 5, 1989.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Los Angeles County

Ramsay-Durfee Estate, 2425 S. Western Ave., Los Angeles, 89000821

Marin County

Station KPH Operating Station, 18500 CA 1, Marshall, 89000819

Station KPH—Marconi Wireless Telegraph Company of America, 18500 CA 1, Marshall, 89000820

San Diego County

Mission Brewery, 1715 Hancock St., San Diego, 89000805

GEORGIA

Crisp County

Cordele Commercial Historic District, Roughly bounded by Sixth Ave., Sixth St., Ninth Ave., and Fourteenth St., Cordele, 89000803

Fulton County

Hotel Row Historic District, 205–235 Mitchell St., Atlanta, 89000802

Washington County

North Harris Street Historic District, Roughly bounded by First Ave., Washington Ave., E. McCarty St., N. Harris St., Malone St., and Warthen St., Sandersville, 89000801

IOWA

Lee County

St. John's Episcopal Church and Parish Hall, 4th and Concert, Keokuk, 89000806

KANSAS

Saline County

US Post Office and Federal Building—Salina (Kansas Post Offices with Artwork, 1936–1942 MPS), 211 W. Iron, Salina, 89000793

Sedgwick County

US Post Office and Federal Building—Wichita (Kansas Post Offices with Artwork, 1936—1942 MPS), *401 N. Market, Wichita, 89000792*

MARYLAND

Baltimore County

Choate House, 9600 Liberty, Randallstown vicinity, 89000807

Half-Way House (Boundary Increase), York Rd. and Weisburg Rd., Parkton vicinity, 89000809

MONTANA

Custer County

Main Street Historic District, Roughly Main St. from Praire Ave. to Fourth St., Miles City, 89000808

NEBRASKA

Franklin County

Lincoln Hotel, 519 15th Ave., Franklin, 89000799

NEW JERSEY

Atlantic County

Linwood Historic District, Roughly Shore Rd. from Royal Ave. to Sterling Ave., Linwood, 89000800

Monmouth County

Coward—Smith House, Burlington Path Rd., Upper Freehold, 89000804

SOUTH CAROLINA

Union County

East Main Street—Douglas Heights Historic District (Union MPS), Roughly bounded by Perrin Ave., S. Church St., and E. Main St., and 100–121 Douglas Heights, Union, 89000796

South Street Historic District (Boundary Increase) (Union MPS), Roughly S. Church St. from South St. to Henrietta St., Union, 89000798

Union Downtown Historic District (Union MPS), Roughly bounded by E. Academy, N. Church, Main, and N. Herndon Sts., Sharpe Ave., and N. Gadberry St., Union, 89000795

Union High School—Main Street Grammar School (Union MPS), E. Main and N. Church Sts., Union, 89000797

WYOMING

Campbell County

Mine Mile Segment, Bozeman Trail (48CA264) (Bozeman Trail in Wyoming MPS), Address Restricted, Pine Tree Junction vicinity, 89000813

Converse County

Antelope Creek Crossing (48C0171 and 48C0165) (Bozeman Trail in Wyoming MPS), Address Restricted, City Unavailable, 89000816

Holdup Hollow Segment, Bozeman Trail (48C0165) (Bozeman Trail in Wyoming MPS), Address Restricted, City Unavailable, 89000818

Ross Flat Segment, Bozeman Trail (48C0165) (Bozeman Trail in Wyoming MPS), Address Restricted, City Unavailable, 89000811

Sage Creek Station (48C0104) (Bozeman Train in Wyoming MPS), Address Restricted, Glenrock vicinity, 89000812

Stinking Water Gulch Segment, Bozeman Trail (48C0165) (Bozeman Train in Wyoming MPS), Address Restricted, City Unavailable, 89000817

Johnson County

Lake Desmet Segment, Bozeman Trail (Bozeman Trail in Wyoming MPS), Address Restricted, City Unavailable, 89000814

Powder River Station—Powder River Crossing (48J0134 and 48J0801) (Bozeman Trail in Wyoming MPS), Address Restricted, Sussex vicinity, 89000810

Trabing Station—Crazy Woman Crossing (Bozeman Trail in Wyoming MPS), Address Restricted, City Unavailable, 89000815

[FR Doc. 89–14580 Filed 6–19–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875–1608, IRM/PE, Room 1100B, SA–14, Washington, DC 20523–1407.

Date Submitted: June 7, 1989.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0003.

Form Number: AID–1550–3.

Type of Submission: Extension.

Title: Title II, Pub. L. 480 Commodities-Annual Estimate of Requirements—FY 19—.

Purpose: The AER is used by the Office of Food for Peace to obtain information critical for the planning and budgeting cycle of the Pub. L. 480 Title II Program. The AERs include planned recipient and ration levels, number of distributions, operating reserves that are needed and inventories on hand.

Reviewer: Donald Arbuckle (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Date: June 6, 1989.

Wayne H. Van Vechten,

Planning and Evaluation Division.

[FR Doc. 89–14496 Filed 6–19–89; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 297X); Docket No. AB-290 (Sub-No. 67X]

CSX Transportation, Inc., and Southern Railway, Company—Abandonment Exemption—Between Burnside and Fort Jackson, in Richland County, SC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904, the abandonment by CSX Transportation, Inc., and Southern Railway Company of their jointly owned 1.52-mile line of railroad in Richland County, SC, subject to standard labor protective conditions.

DATE: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 20, 1989. Formal expressions of intent to file an offer[1] of financial assistant under 49 CFR 1152.27(c)(2) must be filed by June 30, 1989, petitions to stay must be filed by July 5, 1989, and petitions for reconsideration must be filed by July 17, 1989. Requests for a public use condition must be filed by June 30, 1989.

ADDRESSES: Send pleadings referring to Docket Nos. AB–55 (Sub-No. 297X) and AB–290 (Sub-No. 67X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioners' representatives: Patricia Vail, CSX Transportation, Inc., 500 Water Street—J150, Jacksonville, FL 32202

F. Blair Wimbush, Southern Railway Company, 3 Commercial Place, Norfolk, VA 23510–2191

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202 289–4357/4359. [Assistance for hearing impaired is available through TDD services (202) 275–1721.]

Decided: June 12, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–14578 Filed 6–19–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31448]

Joint Use by CSX Transportation, Inc., and Burlington Northern Railroad Co. of Facilities at Memphis, TN—Petition for Exemption Under 49 U.S.C. 10505

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505 the Interstate Commerce Commission

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register of December 22, 1987 (52 FR 48440–48446).

exempts Burlington Northern Railroad Company and CSX Transportation, Inc., from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, for their joint use of certain track and facilities at Memphis, TN. The exemption is subject to employee protective conditions.

DATES: This exemption is effective on June 27, 1989. Petitions for reconsideration must be filed by July 17, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31448 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201 and

Ethel A. Allen, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services, (202) 275–1721.]

Decided: June 12, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–14579 Filed 6–19–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

June 15, 1989.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96–511 applies. Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward Clarke, on (202) 395–7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible. The Departmernt of Justice's Clearance Officer is Mr. Larry E. Miesse who can be reached on (202) 633–4312.

New Collection Note

An expedited OMB review after a ten day public comment period has been requested. A copy of the form is included in this notice.

(1) Application for Employment Authorization.

(2) I–765, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This information will be used by the Immigration and Naturalization Service to determine eligibility for employment authorization under 8 CFR 2777a.12(a) or (c). The issuance of employment authorization documentation will also be based upon information provided.

(5) 1,000,000 respondents at 1 hour each.

(6) 1,000,000 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

BILLING CODE: 44510–10–M

DRAFT

U. S. Department of Justice
Immigration and Naturalization Service

Application for Employment Authorization

How to File:
A separate application must be filed by each applicant. Applications must be typewritten or clearly printed in ink and completed in full. If extra space is needed to answer any item, attach a continuation sheet and indicate your name, A-number (if any) and the item number. **Note:** It is recommended that you retain a complete copy of your application for your records.

Where should you file this application?
Applications must be presented in person to the nearest Immigration and Naturalization Service (INS) Office that processes employment authorization applications within the jurisdiction over your place of residence. Please bring your INS Form I-94 and any document issued to you by the INS granting you previous employment authorization.

What is the fee?
Applicants must pay a fee of $35.00 to file this form unless otherwise noted on the reverse of the form. Please refer to page 3. If required, the fee will not be refunded. Pay by cash or money order in the exact amount. All money orders must be payable in U.S. currency in the United States. Make check or money order payable to "Immigration and Naturalization Service." However, if you live in Guam make it payable to "Treasurer, Guam," or if you live in the U.S. Virgin Islands make it payable to "Commissioner of Finance of the Virgin Islands."

Basic Criteria to Establish Economic Necessity:
Title 45 - Public Welfare, Poverty Guidelines, 45 CFR 1060.2 shall be used as the basic criteria to establish eligibility for employment authorization when the applicant's economic necessity is identified as a factor. The applicant shall include a statement listing all of his or her assets, income, and expenses as evidence of his or her economic need to work.

Note: Not all applicants are required to establish economic necessity. Carefully review the eligibility section of the application. Only aliens who are filing for employment authorization under CFR 274a.12(c), (10), (13), or (14) are required to furnish this information. This information must be furnished on attached sheet(s) and submitted with this application.

What is our authority for collecting this information?
The authority to require you to file Form I-765, Application for Employment Authorization, is contained in the "Immigration Reform and Control Act of 1986." This information is necessary to determine whether you are eligible for employment authorization and for the preparation of your Employment Authorization Document if you are found eligible. Failure to provide all information as requested may result in the denial or rejection of this application.

The information you provide may also be disclosed to other federal, state, local and foreign law enforcement and regulatory agencies during the course of the investigation required by this Service.

What are the penalties for submitting false information?
Title 18, United States Code, Section 1001 states that whoever willfully and knowingly falsifies a material fact, makes a false statement, or makes use of a false document will be fined up to $10,000 or imprisoned up to five years, or both.

Title 18, United States Code, Section 1546(a) states that whoever makes any false statement with respect to a material fact in any document required by the immigration laws or regulations, or presents an application containing any false statement shall be fined or imprisoned or both.

Please Complete Both Sides of Form.

Reporting Burden:
Public reporting burden for this collection of information is estimated to average sixty (60) minutes 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: U.S. Department of Justice, Immigration and Naturalization Service, Room 2011, Washington, D.C. 20536; and to the Office of Management and Budget, Paperwork Reduction Project: OMB No. 1115-XXXX, Washington, D.C. 20503.

DRAFT

U. S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-XXXX

Application for Employment Authorization

Do Not Write in This Block — **Please Complete Both Sides of Form**

Case ID#	Action Stamp	Fee Stamp
A#		
Applicant is filing under 274a.12 ____		Remarks

☐ Application Approved. Employment Authorized / Extended (Circle One) until _____ (Date).
Subject to the following conditions: _____

☐ Application Denied.
☐ Failed to establish eligibility under 8 CFR 274a.12 (a) or (c).
☐ Failed to establish economic necessity as required in 8 CFR 274a.12(c), (10), (13), (14).

I am applying for: ☐ Permission to accept employment
☐ Replacement (of lost employment authorization document).
☐ Extension of my permission to accept employment (attach previous employment authorization document).

1. Name (Family Name in CAPS) (First) (Middle)

2. Other Names Used (Include Maiden Name)

3. Address in the United States (Number and Street) (Apt. Number)

(Town or City) (State/Country) (ZIP Code)

4. Country of Citizenship

5. Place of Birth (Town or City) (State/Province) (Country)

6. Date of Birth (Month/Day/Year) 7. Sex ☐ Male ☐ Female

8. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced

9. Social Security Number (Include all Numbers you have ever used)

10. Alien Registration Number (A Number) or I-94 Number (if any)

11. Have you ever before applied for employment authorization from INS? ☐ Yes (If yes, complete below) ☐ No
Which INS Office? Date(s)

Results (Granted or Denied - attach all documentation)

12. Date of Last Entry into the U.S. (Month/Day/Year)

13. Place of Last Entry into the U.S.

14. Manner of Last Entry (Visitor, Student, etc.)

15. Current Immigration Status (Visitor, Student, etc.)

16. Go to the Eligibility Section on the reverse of this form and check the box which applies to you. In the space below, place the number of the box you selected on the reverse side:
Eligibility under 8 CFR 274a.12
( ) ( )

Complete the reverse of this form before signature.

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking. I have read the reverse of this form and have checked the appropriate block, which is identified in item #16, above.

Signature Telephone Number Date

Signature of Person Preparing Form if Other Than Above: I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Print Name Address *Signature* Date

Initial Receipt	Resubmitted	Relocated		Completed		
		Rec'd	Sent	Approved	Denied	Returned

Eligibility

Pursuant to federal regulations at 8 CFR 274a.12 (a) and any statutory or regulatory references cited, if you are within one of the following classes, you are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of your admission or subsequent change to one of the indicated classes. Upon a determination that you are a member of one of the classes listed in 8 CFR 274a.12 (a) (3) through (11), employment authorization may be granted for the period of time that you are in that status or classification. (Note that 8 CFR 274a.12 (a) (1) and (2) classes already have documentation that confers work authorization.) **Place an "X" in the block next to the number that describes your status or classification.**

- ☐ (a)(3) Admitted to the United States as a refugee pursuant to section 207 of the Immigration and Nationality Act (INA). (Fee Required for Extension or Replacement)
- ☐ (a)(4) Paroled into the United States as a refugee. (Fee Required for Extension or Replacement)
- ☐ (a)(5) Granted asylum under section 208 of the INA. (Fee Required for Extension or Replacement)
- ☐ (a)(6) Admitted to the United States as a nonimmigrant fiance or fiancee pursuant to section 101 (a) (15) (K) of the INA, or admitted as the child of such nonimmigrant fiance or fiancee. (Fee Required for Replacement)
- ☐ (a)(7) Admitted as a parent (N-8) or dependent child (N-9) of an alien granted permanent residence under section 101 (a) (27) (I) of the INA. (Fee Required for Extension or Replacement)
- ☐ (a)(8) Admitted to the United States as a citizen of the Federated States of Micronesia (CFA/FSM) or of the Marshall Islands (CFA/MIS) pursuant to agreements between the United States and the former trust territories. (Fee Required for Extension or Replacement)
- ☐ (a)(9) Granted suspension of deportation under section 244 (a) of the INA. (Fee Required)
- ☐ (a)(10) Granted withholding of deportation under section 243 (h) of the INA. (Fee Required)
- ☐ (a)(11) Granted extended voluntary departure by the Attorney General as a member of a nationality group pursuant to a request by the Secretary of State. (Fee Required)

Pursuant to 8 CFR 274a.12 (c), the following classes of individuals **must** apply for work authorization. If authorized, as a member within one of these classes, you may accept employment subject to any time limitations and/or employer or type of employment restrictions indicated in the regulations or cited on the Employment Authorization Document. The Employment Authorization Document will be valid only while you maintain status, or for no longer than the specific time period authorized by the Service. **Place an "X" in the block next to the number that describes your status or classification.**

- ☐ (c)(1) The spouse or unmarried dependent son or daughter of a foreign government official (A-1 or A-2) pursuant to 8 CFR 214.2 (attach Form I-566 and evidence required by that form). (No Fee)
- ☐ (c)(2) The spouse or unmarried dependent son or daughter of an employee of the Coordination Council for North American Affairs (E-1) pursuant to 8 CFR 214.2 (e). (Fee Required)
- (c)(3) A nonimmigrant (F-1) student who:
  - ☐ (c)(3)(i) Is seeking off-campus employment authorization due to economic necessity pursuant to 8CFR 214.2 (f). Note: Off campus employment for economic necessity is prohibited during the first year of study in the United States. Attach I-20 ID. (Fee Required)
  - ☐ (c)(3)(ii) Is seeking employment for purposes of practical training pursuant to 8 CFR 214.2 (f). The student may be employed only in an occupation which is directly related to his or her course of studies. (First period - attach I-20 ID; second period - attach I-20 ID and Form I-538). (Fee Required)
  - ☐ (c)(3)(iii) Has been offered employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act (59 Stat. 669), if such international organization provides written certification to the district director having jurisdiction over the intended place of employment that the proposed employment is within the scope of the organization's sponsorship. (Attach Form I-538). (Fee Required)
- ☐ (c)(4) The spouse or unmarried dependent son or daughter of an officer or employee of an international organization (G-1 or G-4) pursuant to 8 CFR 214.2 (g). (Attach Form I-566 and evidence required by that form.) (No Fee)
- ☐ (c)(5) The spouse or minor child of an exchange visitor (J-2) pursuant to 8 CFR 214.2 (j). (Fee Required)
- ☐ (c)(6) A nonimmigrant (M-1) student seeking employment for practical training purposes pursuant to 8 CFR 214.2(m). Practical training may only be authorized after completion of the student's course of studies. The student may be employed only in an occupation which is directly related to his or her course of studies. (Attach Form I-538.) (Fee Required)
- ☐ (c)(7) A dependent of an individual classified as NATO-1 through NATO 7 pursuant to 8 CFR 214.2 (n). (Fee Required)
- ☐ (c)(8) Any individual who has filed a non-frivolous application for asylum pursuant to section 208 of the INA. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date. (Fee Required for Extension or Replacement)
- ☐ (c)(9) Any individual who has filed an application for adjustment of status to lawful permanent resident pursuant to section 245 of the INA. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date. (Fee Required)
- ☐ (c)(10) Any individual who has filed an application for suspension of deportation pursuant to section 244 of the INA, if the person establishes an economic need to work. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date. **A showing of economic necessity is a factor in determining eligibility for employment. See instructions concerning "Basic Criteria to Establish Economic Necessity."** (Fee Required)
- ☐ (c)(11) Any individual paroled into the United States temporarily for emergent reasons or reasons deemed strictly in the public interest pursuant to 8 CFR 212.5. (Fee Required)
- ☐ (c)(12) A deportable individual granted voluntary departure, either prior to or after hearing, for reasons set forth in 8 CFR 242.5 (a) (2) (v), (vi), or (viii), may be granted permission to be employed for that period of time prior to the date set for voluntary departure including any extension granted beyond such date. Factors which may be considered in the adjudication of the employment application of an individual within this classification are the following:
  - (i) The length of voluntary departure granted;
  - (ii) The existence of a dependent spouse and/or children in the United States who rely on the applicant for support;
  - (iii) Whether there is a reasonable chance that legal status may ensue in the near future; and
  - (iv) Whether there is a reasonable basis for consideration of discretionary relief." (Fee Required)
- ☐ (c)(13) Any individual against whom exclusion or deportation proceedings have been instituted, who does not have a final order of deportation or exclusion and who is not detained, may be granted temporary employment authorization if the district director determines that employment is appropriate. Factors which may be considered in the adjudication of the employment application of such an individual are the following:
  - (i) The existence of an economic necessity;
  - (ii) The existence of a dependent spouse and/or children in the United States who rely on the applicant for support;
  - (iii) Whether there is a reasonable chance that legal status may ensue in the near future; and
  - (iv) Whether there is a reasonable basis for consideration of discretionary relief. **A showing of economic necessity is a factor in determining eligibility for employment. See instructions concerning "Basic Criteria to Establish Economic Necessity."** (Fee Required)
- ☐ (c)(14) An individual who has been granted deferred action, an act of administrative convenience to the government which gives some cases lower priority, if the person establishes an economic necessity for employment. **A showing of economic necessity is a factor in determining eligibility for employment. See instructions concerning "Basic Criteria to Establish Economic Necessity."** (Fee Required)
- (c)(15) A nonimmigrant whose application for extension of stay has not been adjudicated within the 120-day period as set forth within the following classes:
  - ☐ (c)(15)(i) A temporary worker or trainee (H-1, H-2A, H-2B, or H-3), pursuant to 8 CFR 214.2 (h). A person in this status may be employed only by the petitioner through whom the status was obtained. (Fee Required)
  - ☐ (c)(15)(ii) An exchange visitor (J-1), pursuant to 8 CFR 214.2(j). A person in this status may be employed only by the exchange visitor program sponsor or appropriate designee and within the guidelines of the program approved by the United States Information Agency. (Fee Required)
  - ☐ (c)(15)(iii) An intra-company transferee (L-1), pursuant to 8 CFR 214.2 (l). A person in this status may be employed only by the petitioner through whom the status was obtained. (Fee Required)

[FR Doc. 89-14543 Filed 6-19-89; 8:45 am]
BILLING CODE 4410-10-C

DRAFT

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 23, 1989, Sterling Drug, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance meperidine (pethidine) (9230).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (30 days from publication).

Gene R. Haislip,

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

Dated: June 13, 1989.

[FR Doc. 89-14552 Filed 6-19-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated January 14, 1988, and published in the **Federal Register** on December 15, 1987, (52 FR 47643), Norac Company, Inc., 405 South Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

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

Dated: June 13, 1989.

[FR Doc. 89-14553 Filed 6-19-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/reporting requirement.
- The title of the recordkeeping/reporting requirement.
- The OMB and Agency identification numbers, if applicable.
- How often the recordkeeping/reporting requirement is needed.
- Who will be required to or asked to report or keep records.
- Whether small businesses or organizations are affected.
- An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
- The number of forms in the request for approval, if applicable.
- An abstract describing the need for and uses of the information collection.

Comments andQuestions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503, (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Unemployment Insurance Automation Support Account Field Memorandum
As needed
State or local governments
32 respondents; 9,600 total hours; 150 hours per response; no forms
Issues procedures for State UI agencies to use when applying for UI automation funds and issues guidelines for Regional Offices to follow in reviewing proposals.

Extension

Employment Standards Administration
Bona Fide Profit-Sharing Plan or Trust (29 CFR Part 549; Disclosure Requirement (29 CFR 549.1(d)(2))
1215-0122
Recordkeeping
Businesses or other for profit; small businesses or organizations
25 respondents; 3 total hours; 5 min. per response
Section 7(e)(3)(b) of the Fair Labor Standards Act permits the exclusion from an employee's regular rate of pay of payments on behalf of an employee to a "bona fide" profit sharing plan. Regulations 29 CFR Part 549, set forth the requirements for a bona fide profit sharing plan.

Revision

Bureau of Labor Statistics
Employee Benefits Survey
1220-0084; BLS 3111
Annually, but coverage varies:
State and local governments and small private establishments in even-numbered years; medium and large

private establishments in odd-numbered years; business or other for-profit organizations, including small businesses; non-profit institutions
1990, 1992: 3300 responses; 4225 hours; 1 hour 17 minutes per respondent; 1 form
1991: 1900 responses; 2375 hours; 1 hour 15 minutes per respondent; 1 form

The revised Employee Benefits Survey will present data on employee benefits in small (1–99 employees) private firms and in state and local governments beginning in 1990, and in medium and large private firms in alternate years. The current EBS, which covers State and local governments and medium and large firms in private industry, is used by Federal agencies and the Congress to determine policy affecting benefits of all workers; and by the private sector and State and local governments in benefits administration, union negotiations, and research.

Extension

Pension and Welfare Benefits Administration
DOL Prohibited Transaction Class Exemption 76–1
Businesses or other for-profit; small businesses or organizations; non-profits
3075 responses, 770 hours, .25 hours per response

The paperwork requirement included in this prohibited transaction class exemption is maintenance of written records documenting the agreement between a plan and a participating employer concerning payment of delinquent plan contributions; the agreement between a plan and participating employer regarding the terms under which a plan makes a loan to the employer for construction; and, the agreement concerning the leasing of office space, provision of administrative services or sale/leasing of goods by a plan to an employer.

Extension

Pension and Welfare Benefits Administration
Prohibited Transaction Class Exemption 81–8
Other
Business and other for-profit
58,210 response; 9702 hours, 10 minutes per response

This class exemption exempts from the prohibited transaction restrictions of ERISA the investment of plan assets which involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan of certain types of short-term debt obligations.

Extension

Employment and Training Administration
Application for Alien Employment Certification (ETA 750 A & B)
1205–0015; 1 form
On occasion
Individuals or households; Businesses or other for-profit
54,000 respondents; 135,000 total hours; 2½ hrs. per response; 1 form

The Application for Alien Labor Certification serves as the basic application for labor certification and is used by DOL to fulfill its obligations under 20 CFR 621 and 656.

Extension

Employment Standards Administration
Medical Travel Refund Request
1215–0054; CM–957
On occasion
Individuals or households
23,500 respondents; 6666 total hours; 10 minutes per response; 1 form

The miner medical refund request is used by miners (claimants and beneficiaries) who are seeking reimbursement for out-of-pocket expenses incurred when they traveled to undergo diagnostic medical testing (claimants) or treatment for their black lung disease (beneficiaries).

Signed at Washington, DC this 14th day June, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–14573 Filed 6–19–89; 8:45 am]
BILLING CODE 4510–29–M

Employment and Training Administration

Atlas Wireline Service (Formerly Dresser Atlas) and Atlas Wireline McCullough (Formerly NL Industries); Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA–W–20,980 Alice, Texas, TA–W–20,982 Laredo, Texas, TA–W–20,982A all other locations in Texas, TA–W–20,982B all locations in North Dakota, TA–W–20,982C all locations in New Mexico, TA–W–20,982D all locations in Utah, TA–W–20,982E all locations in California, TA–W–20,982F all locations in Oklahoma, TA–W–20,982G all locations in Louisiana, TA–W–20,982H all locations in Mississippi, TA–W–20,982I all locations in Colorado, TA–W–20,982J all locations in Illinois, TA–W–20,982K all locations in Kentucky, TA–W–20,982L all locations in Alaska; TA–W–20,981 Alice, Texas, TA–W–20,983 Laredo, Texas, TA–W–20,983A all other locations in Texas, TA–W–20,983B all locations in North Dakota, TA–W–20,983C all locations in New Mexico, TA–W–20,983D all locations in Utah, TA–W–20,983E all locations in Oklahoma, TA–W–20,983F all locations in California, TA–W–20,983G all locations in Louisiana, TA–W–20,983H all locations in Mississippi, TA–W–20,983I all locations in Colorado.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 14, 1988 applicable to all workers of Atlas Wireline Service and Atlas Wireline McCullough both in Alice and Laredo, Texas.

The certification is being amended to properly reflect the correct worker group. New information from the company shows that worker separations occurred in several other States not originally included in the Department's initial certification. The notice, therefore is amended by including all locations in the following States for workers of Atlas Wireline Service and Atlas Wireline McCullough: North Dakota, New Mexico, Utah, Oklahoma, California, Louisiana, Mississippi and Colorado and in other locations in Texas. Additionally, worker separations occurred in Illinois, Kentucky and Alaska for Atlas Wireline Service. It was the Department's intent to include all workers of Atlas Wireline Service and Atlas Wireline McCullough.

The amended notice applicable to TA–W–20,980; TA–W–20,981; TA–W–20,982 and TA–W–20,983 is hereby issued as follows:

"All workers of the Atlas Wireline Service, formerly Dresser Atlas, in Alice and Laredo, Texas and in all other locations of Texas and in all locations in the States of North Dakota, New Mexico, Utah, California, Oklahoma, Louisiana, Mississippi, Colorado, Illinois, Kentucky and Alaska who became totally or partially separated from employment on or after October 1, 1985 and all workers of Atlas Wireline McCullough (formerly NL Industries) in Alice and Laredo, Texas and in all other locations of Texas and in all locations in the States of North Dakota, New Mexico, Utah, California, Oklahoma, Louisiana, Mississippi and Colorado who became totally or partially separated on or after January 1, 1988 are eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974."

Signed at Washington, DC, this 9th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–14569 Filed 6–19–89; 8:45 am]
BILLING CODE 4510–30–M

Dresser Industries, Incorporated Guiberson Division; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA-W-22,355 Houston, Texas, TA-W-22,394 Dallas, Texas, TA-W-22,394A all other locations in Texas, TA-W-22,394B all locations in Wyoming, TA-W-22,394C all locations in Illinois, TA-W-22,394D all locations in Kansas, TA-W-22,394E all locations in Louisiana, TA-W-22,394F all locations in Oklahoma, TA-W-22,394G all locations in New Mexico, TA-W-22,394H all locations in California, TA-W-22,394I all locations in Alaska.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 10, 1989 applicable to all workers of the Guiberson Division of Dresser Industries, Inc. The certification was amended on May 5, 1989 to include locations in additional States.

Based on additional information from the company, worker separations occurred at various locations in New Mexico, California and Alaska during the period applicable to the petition.

The notice, therefore, is amended by including all locations of the Guiberson Division of Dresser Industries, Inc., in the States of New Mexico, California and Alaska.

The amended notice applicable to TA-W-22,355 and TA-W-22,394 is hereby issued as follows:

"All workers of the Guiberson Division of Dresser Industries, Inc., in Houston and Dallas, Texas and in all other locations of Texas and in all locations in the States of Wyoming, Illinois, Kansas, Louisiana, Oklahoma, New Mexico, California and Alaska who became totally or partially separated from employment on or after August 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

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

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-14570 Filed 6-19-89; 8:45 am]

BILLING CODE 4510-30-M

Levelor Lorentzen, Incorp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-22,240 Warehouse, Parsippany, New Jersey, TA-W-22, 240A Corporate HQ., Parsippany, New Jersey.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 23, 1989 applicable to all workers of Levelor Lorentzen, Inc., Warehouse in Parsippany, New Jersey.

The certification is being amended to properly reflect the correct worker group. New information from the company shows that worker separations at the corportate headquarters also in Parsippany, New Jersey were directly related to the layoffs at the warehousing operation. The notice, therefore, is amended by includiing the corporate headquarters in Parsippany, New Jersey.

The amended notice applicable to TA-W-22,240 is hereby issued as follows:

"All workers of Levelor Lorentzen, Inc., Warehouse and Corporate Headquarters, Parsippany, New Jersey who became totally or partially separated from employment on or after November 10, 1987 and before January 31, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 8th day of June 1989.

Barbara Ann Farmer,

Director, Office of Program Management.

[FR Doc. 89-14571 Filed 6-19-89; 8:45 am]

BILLING CODE 4510-30-M

Resources Investment Corp. Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-21,382 Denver, Colorado, TA-W-21,382B Great Bend, Kansas, TA-W-21,382C Brownfield, Texas, TA-W-21,382A Energy Investment Corporation, Denver, Colorado.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 13, 1988 applicable to all workers of Resources Investment Corporation and Energy Investment Corporation both in Denver, Colorado.

Based on new information from the company, additional workers were separated from Resources Investment Corporation in Great Bend, Kansas and Brownfield, Texas. The notice, therefore is amended by including all locations of Resources Investment Corporation.

The amended notice applicable to TA-W-21,382 is issued as follows:

"All workers of Resources Investment Corporation, Denver, Colorado; Great Bend, Kansas and Brownfield, Texas and all workers of Energy Management Corporation Denver, Colorado who became totally or partially separated from employment on or after October 4, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 7th day of June, 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-14572 Filed 6-19-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-82-C]

Preece Processing, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Preece Processing, Inc., P.O. Box 449, Turkey Creek, Kentucky 41570 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 15-16441) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine height ranges from 30 to 50 inches.

3. The use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety for the miners affected because the cabs or canopies would:

(a) Rub the top of the mine, pulling out roof bolts and loose rock;

(b) Cause the operator to lean outside of the scoop to operate it; and

(c) Limit the equipment operator's vision.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 20, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 13, 1989.

[FR Doc. 89-14575 Filed 6-19-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that an ad-hoc meeting on Challenge III guidelines will be held on July 5, 1989, from 1:00 p.m.–5:00 p.m. in Room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include policy and guidelines for Challenge III grants.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–14726 Filed 6–19–89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published May 17, 1989 (54 FR 21295). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the July 1989 ACRS full Committee and the ACNW meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/ 492–7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS SUBCOMMITTEE MEETINGS

Materials and Metallurgy, June 20, 1989, Bethesda, MD. The Subcommittee will review low upper shelf fracture energy concerns of reactor pressure vessels.

Mechanical Components, June 21, 1989, Bethesda, MD. The Subcommittee will review and discuss: (1) Bechtel/ KWU Alliance Program on MOV operability, (2) concerns on the reliability of check valves, and (3) other related matters.

Extreme External Phenomena, June 22, 1989, Bethesda, MD. The Subcommittee will review the proposed resolution of USI A–40, "Seismic Design Criteria Short Term Program."

Generic Items, July 12, 1989, Bethesda, MD. The Subcommittee will discuss the Multiple System Responses Program (MSRP).

Auxiliary and Secondary Systems, July 12, 1989, Bethesda, MD. The Subcommittee will review the adequacy of the staff's proposed plans to implement the recommendations resulting from the Fire Risk Scoping Study and other matters related to fire protection systems.

B&W Reactor Plants (Rancho Seco), July 25, 1989, Sacramento, CA—CANCELLED.

Regulatory Policies and Practices, August 9, 1989, Bethesda, MD. The Subcommittee will discuss integration of the regulatory process.

Regional Programs, August 29–30, 1989, King of Prussia, PA (Region I Office). The Subcommittee will review the activities under the purview of the NRC Region I Office.

Regulatory Policies and Practices, September 6, 1989, Bethesda, MD. The Subcommittee will review the staff's proposed rule on license renewal/ extension.

Advanced Pressurized Water Reactors, Date to be determined (July/ August), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Advanced Pressurized Water Reactors, Date to be determined (July/ August), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR–DC).

Advanced Pressurized Water Reactors, Date to be determined (July/ August), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Severe Accidents, Date to be determined (July/August), Bethesda, MD. The Subcommittee will discuss the NRC Severe Accident Research Program (SARP) plan.

Severe Accidents, Date to be determined (July/August), Bethesda, MD. The Subcommittee will discuss the NUMARC Accident Management guideline document and the NRC research program in the accident management area.

Joint Severe Accidents and Probabilistic Risk Assessment, Date to be determined (July/August), Location to be determined. The Subcommittees will discuss the second draft of NUREG–1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

Joint Containment Systems and Structural Engineering, Date to be determined (July/August), San Francisco, CA area. The Subcommittees will discuss containment design criteria for future plants with invited speakers from industry.

Thermal Hydraulic Phenomena, Date to be determined (July/August), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

Decay Heat Removal Systems, Date to be determined (July/August), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Thermal Hydraulic Phenomena, Date to be determined (August), Bethesda, MD. The Subcommittee will review the proposed experimental program to investigate specific thermal hydraulic phenomena of the B&W OTSG.

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (September), Bethesda, MD. The Subcommittees will continue their review of boiling water reactor core power stability pursuant to the core power oscillation event at LaSalle County Station, Unit 2.

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry best-estimate ECCS model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Extreme External Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will review planning documents on external events.

Reliability Assurance, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of implementation of the resolution of USI A–46, "Seismic Qualification of Equipment in Operating Plants," and other related matters.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

ACRS Full Committee Meetings

351st ACRS Meeting, July 13–15, 1989—Items are tentatively scheduled.

*A. *Containment Performance Improvement Program (Open)*—Briefing by NRC staff regarding the status of this program.

*B. *Seismic Design Criteria (Open)*—ACRS review and report regarding the proposed resolution of USI A–40, "Seismic Design Criteria—Short Term Program."

*C. *Advanced Light-Water Reactors (Open)*—Review of proposed EPRI requirements for design of advanced LWRs.

*D. *Commanche Peak Nuclear Station, Units 1 and 2 (Open)*—Briefing by NRC staff regarding issuance of an operating license for this nuclear facility.

*E. *Nuclear Power Plant Operations (Open)*—Briefing by representatives of the NRC staff regarding spin-off from the Chernobyl nuclear power plant accident related to human factors and performance.

*F. *Multiple System Responses Program (Open)*—Review and report on the status of this program.

*G. *Fire Risk Scoping Study (Open)*—Review and report on the NRC program to implement the recommendations resulting from the Fire Risk Scoping Study (NUREG/CR–5088).

*H. *Technical Specification Improvements (Open)*—Briefing by representatives of the NRC staff regarding development of improved Technical Specifications for nuclear power plants.

*I. *ACRS Subcommittee Activities (Open)*—Reports by members of the designated subcommittee related to assigned areas including:

1. Proposed power level increase for the Indian Point Nuclear Power Station, Unit 2.

2. ACRS evaluation of nuclear power plant operating experience and incidents.

*J. *Nomination of ACRS Members (Open/Closed)*—Discuss qualifications of candidates nominated for consideration for appointment to the ACRS.

*K. *Future Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

*L. *Meeting with NUMARC (Open)*—Discuss items of mutual interest.

352nd ACRS Meeting, August 10–12, 1989—Agenda to be announced.

353rd ACRS Meeting, September 7–9, 1989—Agenda to be announced.

ACNW Full Committee Meetings

12th ACNW Meeting, June 28–30, 1989—The purpose of this meeting includes: completion of the ACNW review of the Site Characterization Analysis, a discussion of reporting mishaps in the management of low-level wastes, a status report on cementitious waste forms, a discussion of the approach to performance assessment for the high-level waste repository and status of activities, a discussion of research related to nuclear waste, and an administrative session to discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters.

13th ACNW Meeting, July 26–27, 1989—The Committee will discuss: an EPA Low-Level Waste Standard, the status of NRC/DOE Interactions on DOE quality assurance programs, performance assessment for LLW disposal, discussion of a scoping PRA for the high-level waste repository, and meeting with Commissioners.

ACNW Working Group Meeting on Mixed Wastes, August 4–5, 1989—Agenda to be announced.

14th ACNW Meeting, September 13–15, 1989—Agenda to be announced.

Date: June 14, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–14488 Filed 6–19–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co.; Notice of Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisions Operating License No. DPR–20, issued to Consumers Power Company (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

The proposed amendment would add new Table 3.6.1 to identify all containment isolation values needed to isolate automatically upon receipt of a containment high radiation or containment high pressure signal. The proposed changes would (1) allow for manual operation of certain containment isolation valves for the purpose of sampling the safety injection tanks while the reactor is at power, (2) provide consistency with the Standard Technical Specifications with respect to containment isolation value requirements, and (3) reflect the present containment vent pathway.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 20, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by

the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any other which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first perhearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

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 required that the petitioner or representative for 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 Lawrence A. Yandell: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presideing 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).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 15, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 9th day of June.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-14563 Filed 6-19-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[34-26916; NSCC-89-6]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corporation Relating to a Modification to NSCC's Fees For Trade Correction

June 12, 1989.President

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 26, 1989 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's Rules and Procedures as per Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to modify NSCC's fee schedule to accommodate the earlier comparison of transactions. Under NSCC's fee schedule a charge is imposed for corrections made on T+2 and thereafter because, prior to the earlier comparison systems being initiated, no trade correction occurred prior to T+2. However, the acceleration of the OTC Comparison Cycle (see SR-NSCC-89-2) and the Listed Comparison Cycle (see SR-NSCC-89-4) will permit trade corrections to occur on T+1. Therefore, NSCC is revising the terminology in the

fee schedule to permit the fee to be imposed "on the first day an advisory appears on a contract sheet" and the first day other changes can be submitted, rather than tying the fee to specific days. This change is effective concurrent with the implementation of the OTC acceleration and will accommodate Listed processing now, as well as after Listed acceleration is implemented. (b) The proposed rule change relates to the equitable allocation of fees among NSCC Members and is, therefore, consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communciations relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 11, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated aauthority.

Jonathan G. Katz,

Secretary.

Amend NSCC's Fee Structure as follows:

* indicates previously italicized material

[Brackets] indicate deletions

Italics indicate additions

I. Trade Comparison and Recording Service Fees*

* * * * *

B. Trade Correction Fees: (1)

1. Stamped Advisory submitted on:

a. [T+2] *The first day the advisory appears on the contract sheet*—$.20 per stamped advisory.

b. [T+3] *The second day the advisory appears on the contract sheet*—$.35 per stamped advisory.

* * * * *

4. QT (Questioned Trade) and DK (Don't Know) input by non-originating party:

a. [T+3] *The first day the QT/DK input can be entered into the system*—$.35 per QT/DK.

b. [T+N] *The second day or thereafter the QT/DK input can be entered into the system*—$.50 per QT/DK.

5. All other input [after T+1] (CHC, As Of, Demand As Of, Withhold, Demand Withhold):

a. [T+2] *The first day all other input can be entered into the system*—$.20 per side.

b. [T+3] *The second day all other input can be entered into the system*—$.35 per side.

c. [T+N] *The third day or thereafter all other input can be entered into the system*—$.50 per side.

* * * * *

[FR Doc. 89-14520 Filed 6-19-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26914; File No. SR-NYSE-89-12]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc. Relating to Auxiliary Closing Procedures for "Expiration Fridays"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on June 8, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a change in the cut-off time for the entry of certain market-at-the-close orders in so-called "Pilot Stocks" on "Expiration Fridays" from 3:30 p.m. to 3:00 p.m. Information as to imbalances of 50,000 shares or more, which is currently disseminated as soon as possible after 3:30 p.m., would be disseminated as soon as possible after 3:00 p.m. At 3:30 p.m., or as soon as possible thereafter, the procedure would be repeated. For any stock for which an imbalance had been previously published, a subsequent imbalance message would be disseminated indicating whether an imbalance of 50,000 shares or more exists and, if so, the size of the imbalance. The Exchange is requesting that the Commission approve the proposed rule change on an accelerated basis prior to the June 16, 1989 "Expiration Friday."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of

these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In September 1986, the Exchange adopted auxiliary closing procedures for use on days when stock index options and options on stock index futures expire concurrently. These procedures currently apply to 52 stocks (the so-called "Pilot Stocks", comprised of the 50 highest capitalized stocks among the S&P 500 stocks, and two component stocks of the Major Market Index that are not among the S&P top 50) for all monthly expiration days. They require the entry of all market-at-the-close orders in positions relating to any strategy involving any stock index futures, stock index options, or options on stock index futures by 3:30 p.m. These procedures also require the specialist to make public market-at-the-close order imbalances of 50,000 shares or more in these stocks as soon as possible after 3:30 p.m. In addition, the procedures prohibit the entry of market-at-the-close orders that do *not* offset a published imbalance.

The proposed change moves the cut-off time for the above procedures from 3:30 to 3:00 p.m., with imbalance information to be disseminated as soon as possible after 3:00 p.m. At 3:30 p.m., or as soon as possible thereafter, the procedure would be repeated. For any stock for which an imbalance had been previously published, a subsequent imbalance message would be disseminated indicating whether an imbalance of 50,000 shares or more exists and, if so, the size of the imbalance. The same order entry restrictions vis-a-vis the imbalance would apply.

The purpose of the proposed rule change is to allow for more "sunshine" on market conditions for the Pilot Stocks, by moving the cut-off time for current procedures, as described above, from 3:30 to 3:00 p.m. and by requiring the publication of updated imbalances at 3:30 p.m. This extra half-hour, along with the additional imbalance information, will allow market participants more time to respond to published market-at-the-close imbalances, which should further reduce end-of-day market volatility.

(b) Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. The proposed rule change should enhance the market-on-close procedures that have been utilized on prior expirations. The new procedure would allow for more time to disseminate MOC imbalances, and thereby facilitate the attraction of contra-side interest.

The Commission finds good cause for approving this rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order to implement these procedures on the upcoming June 16, 1989 expiration. Moreover, the procedures contain only a minor change from the procedures utilized by the NYSE on earlier expirations, and are intended to reduce excessive market volatility at the close.[1]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by July 11, 1989.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

June 9, 1989.

[FR Doc. 89-14521 Filed 6-19-89; 8:45 am]

BILLING CODE 8010-01-M

[1] No comments were received for proposed rule changes containing almost the same procedures on prior expiration Fridays.

[Release No. 34-26910; File No. SR-PHLX-89-29]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Postponement of the Effectiveness of the CIP Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 (the "Act"), hereby submits this proposed rule change postponing the effectiveness of the schedule of fees applicable to the trading of Cash Index Participations ("CIPs") from the date of this filing until June 30, 1989. Accordingly, no CIP transaction value, transaction or brokerage assessment charge will be

imposed by the Exchange on any member during this period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

On April 26, 1989, the PHLX filed SR-PHLX-89-08 with the Commission which established a schedule of CIP fees. The proposal will postpone the effectiveness of that fee schedule from the date of this filing until June 30, 1989.

The proposed rule change is consistent with section 6(b)(4) of the Act, in that it provides for no CIP fees being imposed on any member during a promotional period which introduces a competitive new product.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 11, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: June 9, 1989.

[FR Doc. 89-14522 Filed 6-19-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26915; File No. SR-NASD-89-13]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Providing Broader Access to Information Contained on Form U-5

The National Association of Securities Dealers, Inc. ("NASD") submitted on March 21, 1989, and amended on April 25, 1989, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Article IV, section 3 of the NASD By-Laws and Article III, section 27(e) of the Rules of Fair Practice. The proposal requires NASD members to provide a copy of the Form U-5, the Uniform Termination Notice for Securities Industry Registration, to persons who terminate or are terminated by members and requires members seeking to associate persons in a registered capacity to use reasonable efforts to obtain the most recent Form U-5 from those persons.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26772, May 1, 1989) and by publication in the **Federal Register** (54 FR 19622, May 8, 1989). No comments were received with respect to the proposed rule change.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: June 12, 1989.

[FR Doc. 89-14523 Filed 6-19-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16996; 812-7209]

Daily Money Fund 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 (the "1940 Act").

Applicants: Daily Money Fund; Daily Tax-Exempt Money Fund; Equity Portfolio: Growth; Equity Portfolio: Income; Fidelity California Tax-Free

[1] After the filing of the proposed rule change with the Commission, the NASD received a comment letter, dated April 4, 1989, from Robert F. Price, Chairman, Federal Regulation Committee, and O. Ray Vass, Chairman, Self Regulation and Supervisory Practices Committee, of the Securities Industry Association, New York, New York. The letter expresses concerns about litigation risks in connection with the dissemination of information about current and former employees and suggests a clarification to the policy statement prefacing and explaining the proposed amendments. In an April 26, 1989, letter, Dennis C. Hensley, Vice President and Deputy General Counsel of the NASD, indicated that attorneys from the General Counsel's office would contact the commentators regarding an NASD response and expressed his personal view that a properly worded Notice to Members, issued at the time the proposed rule change is promulgated, would achieve the commentators' goals. These letters are available for inspection and copying in the Commission's Public Reference Room.

Fund; Fidelity Capital Trust; Fidelity Cash Reserves; Fidelity Charles Street Trust; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Corporate Trust; Fidelity Court Street Trust; Fidelity Daily Income Trust; Fidelity Destiny Portfolios, Fidelity Devonshire Trust; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Fund; Fidelity Government Securities Fund; Fidelity Growth Company Fund; Fidelity Income Fund; Fidelity Institutional Cash Portfolios; Fidelity Institutional Tax-Exempt Cash Portfolios; Fidelity Institutional Trust; Fidelity Intermediate Bond Fund; Fidelity Investment Trust; Fidelity Limited Term Municipals; Fidelity Magellan Fund; Fidelity Massachusetts Tax-Free Fund; Fidelity Money Market Trust; Fidelity Municpal Trust; Fidelity New York Tax-Free Fund; Fidelity Puritan Trust; Fidelity Qualified Dividend Fund; Fidelity Securities Fund; Fidelity Select Protfolios; Fidelity Special Situations Fund; Fidelity Summer Street Trust; Fidelity Tax-Exempt Money Market Trust; Fidelity Trend Fund; Financial Reserves Fund; Income Portfolios; The North Carolina Cash Management Trust; Plymouth Fund; Plymouth Investment Series; Plymouth Securities Trust; Fidelity New Jersey Tax-Free Portfolio, L.P.; Fidelity Yen Performance Portfolio, L.P.; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Sterling Performance Portfolio, L.P.; Fidelity U.S. Investments -Government Securities Fund, L.P.; Fidelity U.S. Treasury Money Market Fund, L.P.; Tax-Exempt Portfolios; Variable Insurance Products Fund; Variable Insurance Products Fund II; Zero Coupon Bond Fund (collectively, the "Funds"); and Fidelity Management & Reseach Company ("FMR") and Fidelity Distributors Corporation ("Distributors") and on behalf of future investment companies for which FMR serves as investment adviser or Distributors serves as distributor.

Relevant 1940 Act Sections: Exemption requested under sections 6(c) and 17(b) of the 1940 Act from the provisions of sections 17(a)(1), 17(a)(2) and 17(e)(1) of the 1940 Act.

Summary of Application: Applicants seek to amend a prior order (Investment Company Act Release No. 12912, Dec. 21, 1982) ("Prior Order") to permit the Funds to engage in certain securities transactions with Affiliated Banks (as defined below) and to permit such Affiliated Banks to receive certain compensation as described below.

Filing Dates: The application was filed on December 30, 1989, and an amendment thereto was filed on May 15, 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 3, 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 haring may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Fidelity Management & Research Company, 82 Devonshire Street (F5E), Boston, MA 02109, Attention: Arthur S. Loring, Esq.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–3026, or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Prior Order under sections 6(c) and 17(b) of the 1940 Act grants exemptions from section 17(a)(1), 17(a)(2), and 17(e)(1) to permit the Funds to engage in certain securities transactions with "Affiliated Banks" subject to the conditions set forth in the application for the Prior Order. *In the Matter of Fidelity Fund,* Investment Company Act Release No. 12851 (Nov. 24, 1982). As defined in the Prior Order, Affiliated Banks are banks, bank holding companies, or affiliates thereof which directly or indirectly (1) own, control, or hold five percent or more of the outstanding voting securities of any of the Funds, or (2) act as investment adviser to any of the Funds.

2. The types of securities transactions covered by the Prior Order include: (i) Short-term obligations of an Affiliated Bank that is one of the 50 largest United States banks (measured by deposits), their bank that companies or affiliates thereof; (ii) repurchase agreements with an Affiliated Bank that also serves as a custodian to one or more of the Funds; and (iii) tax exempt obligations. The Prior Order also permits an Affiliated Bank to accept compensation within the limitations of 17(e)(2) of the 1940 Act where it acts as agent for any Fund in a permitted transaction.

3. Applicants now seek an amendment to the Prior Order granting Applicants the same relief granted in subsequent orders involving similar issues. *See In the Matter of A.T. Ohio Tax-Free Money Market Fund,* Investment Act Release No. 16602 (Oct. 19, 1988) and *In the Matter of Alex. Brown Cash Reserve Fund, Inc.,* Investment Company Act Release No. 14259 (Nov. 30, 1984).

4. Specifically, Applicants request relief to (1) engage in purchase and sale transactions of both long-term and short-term United States government securities with Affiliated Banks which are primary dealers in these securities ("Affiliated Dealers"), (2) permit such Affiliated Dealers to accept compensation within the limitations of section 17(e)(2) of the 1940 Act for acting as agent for any Fund in connection with the purchase or sale of such United States government securities, and (3) enter into repurchase agreement transactions with an Affiliated Bank if such bank is one of the 50 largest United States banks, measured by deposits.

Applicants' Legal Conclusions

1. The requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. In addition, the terms of the proposed transactions are (1) reasonable and fair and do not involve overreaching on the part of any person, (2) consistent with the policy of each registered investment company concerned, and (3) consistent with the general purposes of the 1940 Act.

2. In purchasing and selling United States government securities, it is critical that the Funds obtain prompt execution of their transaction at a competitive price. Each primary dealer represents a significant portion of the United States government securities market. There are occasions, especially in the disposition of portfolio securities in weak markets, when each primary dealer offers the most favorable price and execution as against the other dealers. Inability to trade with one or more Affiliated Banks will deprive the Funds of the most favorable price and execution on the occasion when those dealers have the best overall offer for a transaction. Further, because the United States government securities market is

highly competitive, removing one or more primary dealers from the Funds' market may deprive the Funds of the most favorable price and execution even when dealing with other dealers. Consequently, the shareholders' return from their investment in the Funds may be reduced if the Funds' access to the primary dealers is restricted.

3. Applicants further assert that it is in the interests of Fund shareholders to permit the Funds to engage in repurchase agreement transactions with banks on an approved list of banks, which present minimal credit risk. In addition, Applicants believe that there may be increased risks of loss and that return to Fund shareholders may be reduced if the Funds are not permitted to engage in repurchase agreement transactions with major United States banks that become affiliated with the Funds.

Applicants' Proposed Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. The Board of Trustees or General Partners of each of the Funds (1) will adopt procedures, pursuant to which transactions may be effected for the Funds, that are reasonably designed to provide that all the conditions in paragraphs 2 through 6 below and the requirements of Investment Company Act Release No. 13005 (Feb. 2, 1983) have been complied with, (2) will review no less frequently than annually such procedures for their continuing appropriateness, and (3) will determine no less frequently than quarterly that such transactions made during the preceding quarter were effected in compliance with such procedures. These procedures will also be approved by a majority of the disinterested trustees or General Partners of the Funds. The investment adviser of each Fund will implement those procedures and make decisions necessary to meet these conditions subject to the direction and control of the Board of Trustees or General Partners of each Fund.

2. No Fund will engage in securities transactions with a primary dealer that is a bank serving as investment adviser to such Fund or affiliated with such a bank. No Fund will enter into repurchase agreements with an Affiliated Bank if, as a result, five percent of its total assets would be invested in repurchase agreement with such bank.

3. The Funds (1) will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1, and (2) will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described below were made.

4. The security to be purchased or sold by a Fund will be consistent with the investment objectives and policies of that Fund as recited in the Fund's registration statement, and will be consistent with the interests of that Fund and its shareholders. Further, the security to be purchased or sold by that Fund must be comparable in terms of quality, yield, and maturity to other similar securities that are appropriate for the Fund and that are being purchased or sold by that Fund must be comparable in terms of quality, yield, and maturity to other similar securities that are appropriate for the Fund and that are being purchased or sold during a comparable period of time.

5. The terms of the transaction must be reasonable and fair to the shareholders of that Fund and cannot involve overreaching of that Fund or its shareholders on the part of any person concerned. In considering whether the price to be paid or received for the security is reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time. Before any transaction in United States government securities may be conducted pursuant to the exemption, the Funds or their advisers must obtain such information as they deem necessary to determine that the price to be paid or received for the security is at least as favorable as that available from other sources. The Funds or their advisers must obtain and document competitive quotations from at least two other dealers with respect to the specific proposed transaction, except that if quotations are unavailable from two such dealers, only one other competitive quotation is required. With respect to prospective purchases of securities, these dealers must be those who have securities of the categories and the type desired in their investors and who are in a position to quote favorable prices with respect thereto. With respect to the prospective disposition of securities, these dealers must be those who, in the experience of the Funds and their adviser, are in a position to quote favorable prices.

6. The commission, fee, spread, or other remuneration to be received by the Affiliated Dealer must be reasonable and fair compared to the commission, fee, spread, or other remuneration received by other brokers or dealers in connection with comparable transactions involving similar securities being purchased or sold during a comparable period of time, but in no event will such fee, commission, spread or other remuneration exceed that which is stated in section 17(e)(2) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14524 Filed 6-19-89; 8:45 am]

BILLING CODE 8010-01-M

[34-26918; MCC-89-5]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Clearing Corporation Relating to a Modified Fee Schedule For Odd Lot Transactions

June 12, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given than on June 6, 1989, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

Midwest Clearing Corporation ("MCC") proposes to modify its fee schedule for odd lot transactions, effective June 1, 1989 as follows:

(*Additions italicized* [Deletions Bracketed]).

Trade Recording

* * * [In addition, a] *A* discount of $0.15 per trade side recorded will be applied to the trade recording fees for trades of 1,000 shares and larger when a *P*[p]articipant exceeds 10,000 recorded trade sides each month. *In addition, a discount of $0.15 per trade side recorded will be applied to the trade recording*

fees for trades of 1 thru 99 shares when a Participant exceeds 1,000 recorded odd lot trade sides each month.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments is received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The new odd lot fees schedule to take effect June 1, 1989 is designed as an incentive for customers to do a greater volume of odd lot business with Midwest Clearing Corporation.

The revised fee schedule is consistent with section 17A of the Securities Exchange Act of 1934 as amended (the "Act") in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatgory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit writtenj data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–MCC–89–05 and should be summitted by July 11, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–14519 Filed 6–19–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before July 20, 1989. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Cary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: Supervisory Assessment of Traits Relative to Promotion/Placement

Form Number: SBA Form 1238

Frequency: On occasion

Description of Respondents: Supervisors of applicants for positions within SBA to evaluate abilities.

Annual Responses: 3600

Annual Burden Hours: 1800

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89–14511 Filed 6–19–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1111]

Discretionary Grant Programs; Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1990 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training concerning the USSR and Eastern Europe to serve as intermediaries administering national competitive programs under the Soviet and Eastern European Research and Training Act. All grants will be annual and based on an open, national competition among applying organizations.

Authority for this program is contained in the Soviet-Eastern European Research and Training Act of 1983.

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1990 under a program administered by the Department of State.

Organization of Notice: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and

priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by September 29, 1989.

Applications Delivered by Mail

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, Suite 233, 1730 K Street NW., Washington, DC 20006.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If an application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the Department of State, INR/RES, Soviet-Eastern European Studies Advisory Committee, Suite 233, 1730 K Street NW., Washington, DC.

The Soviet-Eastern European Studies Advisory Committee will accept hand-delivered applications between 9:00 a.m. and 4:00 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The Act authorizes the Secretary of State to provide financial support for advanced research, training and other related functions.

The full purpose of the Act and the eligibility requirements are set forth in Pub. L. 98–164, Title VIII, 97 Stat. 1047–50. Under Title VIII, the countries include Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, USSR, and Yugoslavia.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from organizations prepared to conduct competitive programs in the field of Soviet and Eastern European and related studies. Applying organizations or institutions should have the capability to conduct *competitive award programs that are national in scope.* Programs of this nature are those that make awards which are based upon an open, nationwide competition incorporating peer group review mechanisms. Applications sought are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the Soviet Union and Eastern Europe by proposing:

(1) *National programs* which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of postdoctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) *National programs* which offer graduate, postdoctoral and teaching fellowships for advanced training in Soviet and Eastern European and related studies, including training in the languages of the Soviet Union and Eastern Europe, such training to be conducted, on a shared-cost basis, at American institutions of higher education;

(3) *National programs* which provide fellowships and other support for American specialists enabling them to conduct advanced research in the field of Soviet, Eastern European and related studies; and those which facilitate research collaboration between Government and private specialists in these fields;

(4) *National programs* which provide advanced training and research on a reciprocal basis in the Soviet Union and in the countries of Eastern Europe by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* which facilitate public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or taining on the Soviet Union and Eastern Europe in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Moreover, support for publications, library activities, and conferences, will be constrained by the following policies:

—*Publications.* Title VIII funds should not be used to subsidize journals, newsletters and other periodical publications except in unique or special circumstances, in which cases the funds should be supplied by peer-review organizations with national competitive programs.

—*Library Activities.* Title VIII funds should not be used for library preservation, cataloging or modernization. However, a national peer-review organization with Title VIII funds could offer modest support to efforts directed toward developing an effective, long-term and well-coordinated strategy to address the serious library needs of the field.

—*Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the qualitative improvement of the professional cadres in the field. Therefore, Title VIII grants generally should not be made solely to support a particular conference or series of conferences. Rather conference funding should come from one or more of the national peer-review organizations receiving Title VIII funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability in Soviet and Eastern European studies.

Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which, over the life of the Act, will ensure attention to all the countries of the area.

Part III

Available Funds

The President has requested for Fiscal Year 1990 $4.6 million for the Title VIII program. However, the amount available for awards (if any) will not be known until legislative action is complete on the bills authorizing and appropriating funds for the Department of State.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Generally, grant agreements will permit the expenditure from a particular year's grant to be made over two or more years.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one page executive summary, a budget, and vitae of professional staff. Proposers may append other information they consider essential, though bulky submissions are discouraged.

Applicants who have received a Title VIII grant in the previous fiscal year competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant also received Title VIII support prior to last year, a summary of those awards would be helpful.

Descriptions of competitive fellowships and other award programs should specify the applicant to award ratios.

Plans for evaluating and selecting applicants to receive awards should be described in detail.

A description of affirmative action policies and practices should be included in the application.

Applicants should include certification of compliance with the provisions of the Drug-Free Workplace Act (PL 100–690), in accordance with Appendix C of 22 CFR Part 127, Subpart F.

Budget

Applicants should familiarize themselves with OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education * * * Uniform Administrative Requirements," and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Educational Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) A budget request containing total amount, a detailed program budget indicating direct expenses by program element, and indirect costs. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants who are requesting Title VIII funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested Title VIII grant funds;

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) Whether payment is requested on a reimbursable basis or by advance methods; re the latter for grants above $120,000, advance funds will be made through a letter of credit, but if less than $120,000 advance of funds will be made by Treasury checks through wire transfers;

(5) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address and point of contact of the audit agency.

Technical Review

The Soviet-Eastern European Studies Advisory Committee will evaluate applications on the basis of the following criteria:

(1) Reponsiveness to the substantive provisions set forth above in *Part II, Program Information* (40 points);

(2) The professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes in the Soviet-Eastern European field (40 points); and

(3) Budget and cost effectiveness (20 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, INR/RES, Department of State, Suite 233, 1730 K Street, NW., Washington, DC 20006. Telephone: (202) 632–6080 or 632–6203.

Dated: June 9, 1989.

Kenneth E. Roberts,

Executive Director, Soviet-Easten European Studies Advisory Committee.

[FR Doc. 89–14545 Filed 6–19–89; 8:45 am]

BILLING CODE 4710–32–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on June 12, 1989

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on June 12, 1989, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shephered, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366–4735, or Gary Waxman or Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirement. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT informaiton colection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the **"For Further Information Contact"** paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on June 12, 1989.

DOT No.: 3223.
OMB No.: 2130–0502.
Administration: Federal Railroad Administration.
Title: Filing of Dedicated Cars.
Need for Information: Regulations require that freight cars assigned to dedicated service be so stencilled. To assure compliance FRA must be notified by written description.
Proposed Use of Information: FRA uses the information to determine that the equipment is safe to operate and qualifies for dedicated service.
Frequency: On occasion.
Burden Estimate: 6 hours.
Respondents: 6 Railroads.
Form(s): N/A.
Average Burden Hours Per Respondent: 1 hour.

DOT No.: 3224.
OMB No.: 2127–0046.
Administration: National Highway Traffic Safety Aministration.
Title: 49 CFR Part 552, Petitions for Rulemaking, Defect, and Noncompliance Orders.
Need for Information: To identify and respond on a timely basis to petitions for rulemaking or defect or noncompliance determination and to inform the public of the procedures following in response to such petitions.
Proposed Use of Information: This regulation establishes procedures for filing petitions with the agency to commence rulemaking or to make a defect or noncompliance determination.
Frequency: On occasion.
Burden Estimate: 100 hours.
Respondents: Individuals, businesses or small businesses.
Form(s): None.
Average Burden Hours Per Respondent: 60 minutes.

DOT No.: 3225.
OMB No.: 2127–0025.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR Part 512, Confidential Business Information.
Need for Information: To ensure confidential treatment to motor vehicle manufacturers.
Proposed Use of Information: This regulation sets forth the procedures to be followed by vehicle and equipment manufacturers, when they are requesting confidential treatment of information they have submitted to the agency.
Frequency: On occasion.
Total Estimated Burden: 600 hours.
Respondents: Motor vehicle manufacturers.
Form(s): None.
Estimated Average Per Response: .2 hours.

DOT No.: 3226.
OMB No.: 2127–0542.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR Part 543, Petitions for Exemption from the Vehicle Theft Prevention Standard.
Need for Information: To set procedures to be followed by manufacturers in preparing and submitting and processing petitions for exemption.
Proposed Use of Information: Manufacturers of passenger automobiles may petition the Secretary for an exemption from the theft prevention standard if a line/lines of vehicles are equipped with an anti-theft device, which is standard equipment and is determined by the Secretary to be as effective as the theft prevention standard.
Frequency: One-time only.
Burden Estimate: 96 hours.
Respondents: Businesses-cargo air carriers.
Form(s): None.
Average Burden Hours Per Respondent: 24 minutes.

DOT No.: 3227.
OMB No.: New.
Administration: U.S. Coast Guard.
Title: Emergency Evacuation Plans for Manned OCS Facilities.
Need for Information: This information collection requirement is needed to comply with section 5201 of the Omnibus Budget Reconciliation Act of 1986, and the recommendations from the National Transportation Safety Board.
Proposed Use of Information: Coast Guard will use the information to ensure that the plans comply with the regulations. The plans will also be used by the persons on board the facility for evacuation purposes in emergency situations.
Frequency: On occasion.
Burden Estimate: 45,612.
Respondents: Operators of manned OCS facilities.
Form(s): N/A.
Average Burden Hours Per Respondent: 40 hours for reporting and 2 hours for recordkeeping.

DOT No.: 3228.
OMB No.: 2132–0513.
Administration: Urban Mass Transportation Administration.
Title: Letter of Credit Application.
Need for Information: The information provides UMTA with data on the organization authorized to execute requests for payments under the letter of credit.
Proposed Use of Information: The information is used to establish a letter of credit for a particular grantee or other qualifying recipient of Federal funds.
Frequency: On occasion.
Burden Estimate: 200 hours.
Respondents: 400.
Form(s): None.
Average Burden Hours Per Respondent: 30 minutes.

DOT No.: 3229.
OMB No.: 2133–0013.
Administration: Maritime Administration.
Title: Monthly Report of Ocean Shipments Moving Under Export, Import Bank Financing.
Need for Information: To document compliance with certain cargo preference statutes.
Proposed Use of Information: To evaluate documentation describing compliance with certain cargo preference statutes.
Frequency: Monthly.
Burden Estimate: 126 hours.
Respondents: Shipowners, ship operators.
Form(s): MA–518.
Average Burden Hours Per Respondent: 30 minutes.

DOT No.: 3230.
OMB No.: 2115–0552.
Administration: U.S. Coast Guard.
Title: Liquefied Natural Gas Waterfront Facilities.
Need for Information: Coast Guard needs this information collection requirement to prevent or mitigate the results of an accidental release of liquefied natural gas (LNG) waterfront facility.
Proposed Use of Information: Coast Guard uses this information to the requirements in 33 CFR 127 are complied with and to determine the suitability of the waterway on which the LNG

waterfront facility is located, for LNG marine traffic.

Frequency: On occasion.

Burden Estimate: 76.

Respondents: Owners/Operators for LNG facilities.

Form(s): None.

Average Burden Hours Per Response: Reporting burden is 5 hours; recordkeeping burden is 28 hours.

DOT No.: 3231.

OMB No.: 2125–0525.

Administration: U.S. Coast Guard.

Title: Subchapter Q Manufacturers Test Reports.

Need for Information: This requirement is needed to determine compliance of the safety equipment and material with the technical requirements contained in the individual specifications.

Proposed Use of Information: The information is used to determine whether the items meet minimum levels of safety and performance, and for identification purposes.

Frequency: On occasion.

Burden Estimate: 112.

Respondents: Manufacturers of safety valves and flame arrestors.

Form(s): None.

Average Burden Hours Per Respondent: Reporting burden is 15 hours and 30 minutes; recordkeeping is 54 minutes.

DOT No.: 3232.

OMB No.: 2115–0071.

Administration: U.S. Coast Guard.

Title: Official Logbook.

Need for Information: Coast Guard needs this requirement to comply with the commercial vessel safety statutes. This information is needed to keep a consolidated official record of all voyages as well as load line and testing records.

Proposed Use of Information: Coast Guard uses this information to determine compliance with the commercial vessel safety program and to examine incidences of shipboard misconduct. Other Federal agencies, maritime casualty investigators and federal and civil courts use this information in cases of injury or litigation between seamen and shipping companies. The seamen use this information to verify employment and wages.

Frequency: On occasion.

Burden Estimate: 1750.

Respondents: Merchant Mariners and Shipping Companies.

Form(s): CG–706B.

Average Burden Hours Per Respondent: 1 hour.

DOT No.: 3233.

OMB No.: 2106–0031.

Administration: Office of the Secretary.

Title: Part 298—Air Taxi Operator and Commuter Carrier Registration/ Operator Policies of Insurance for Aircraft Bodily Injury and Property Damage Liability.

Need for Information: Air Taxi operators and commuter air carriers must register and otherwise comply with Part 298 to obtain exemptions from some of the regulatory provisions of Title IV of the Federal Aviation Act of 1958.

Proposed Use of Information: To maintain a current accurate accounting of all air taxis which have economic authority from the DOT to operate and to assure that operators maintain the prescribed minimum liability insurance coverage.

Frequency: Air taxis must register with DOT before they begin operations and file certification of liability insurance coverage. Operational changes will require amendments to be filed.

Burden Estimate: 3,486 hours annually.

Respondents: 6971.

Form(s): OST Forms 4507 and 4521.

Average Burden Hours Per Respondent: 30 minutes.

DOT No.: 3234.

OMB No.: 2130–0520.

Administration: Federal Railroad Administration.

Title: Stenciling Reporting Mark, Car Number, etc., on Freight Cars.

Need for Information: Reporting marks and car numbers are required to be stenciled on freight cars for identification purposes.

Proposed Use of Information: The information is used solely to identify freight cars. Federal Inspectors utilize the markings to monitor a railroad's compliance with safety regulations.

Frequency: Recordkeeping—when freight car is built or rebuilt.

Burden Estimate: 23,588 hours.

Respondents: 400 Railroads.

Form(s): N/A.

Average Burden Hours Per Respondent: 59 hours.

DOT No.: 3235.

OMB No.: New.

Administration: Federal Aviation Administration.

Title: Survey of AME Computer Capability.

Need for Information: FAA office of Aviation Medicine is conducting a prototype test to determine the feasibility of electronic transmissions of airman medical certification application data, between the FAA designated Aviation Medical Examiners (AMEs) and the Aeromedical Certification Division.

Proposed Use of Information: The information obtained will be used to determine the impact, cost/benefit, design and system requirement for potential full system implementation.

Frequency: One time survey.

Burden Estimate: 500 hours.

Respondents: FAA designated Airmen Medical Examiners.

Form(s): FAA Form 8500–XX.

Average Burden Hours Per Respondent: It is estimated that it will take an average of 15 minutes per person to complete the survey.

DOT No.: 3236.

OMB No.: New.

Administration: Federal Highway Administration.

Title: Fatigue and Driver Alertness Study.

Need for Information: To collect and analyze data on commercial driver fatigue.

Proposed Use of Information: To improve the safety of trucking operations in response to Congress' report for FHWA to evaluate the impact of driver fatigue on commercial vehicle accidents.

Frequency: One-time administrative.

Burden Estimate: 467 hours.

Respondents: Businesses.

Form(s): None.

Average Burden Hours Per Respondent: The average time of response for this information collection is 20 minutes per response.

Issued in Washington, DC, on June 12, 1989.

Robert J. Woods,

Director of Information, Resource Management.

[FR Doc. 89–14538 Filed 6–19–89; 8:45 am]

BILLING CODE 4910–62–M

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in acutal operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 89–4–11 set the currently effective two-month SFFL applicable through May 31, 1989.

In establishing the SFFL for the two-month period beginning June 1, 1989, we have projected nonfuel costs based on the year ended December 31, 1988 data, and have determined fuel prices on the basis of the latest experienced monthly

fuel cost levels as reported to the Department.

By order 89–6–31 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic	1.2556
Canada	1.3302
Pacific	1.7511
Canada	1.3504

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: June 13, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–14537 Filed 6–19–89; 8:45 am]

BILLING CODE 4910–62–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 117
Tuesday, June 20, 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).

INTERNATIONAL TRADE COMMISSION

[USITC SE-89-23]

TIME AND DATE: Thursday, June 29, 1989 at 11:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Imported Artificial Breast Prostheses and the Manufacturing Process Thereof (D/N 1513).
5. Inv. 731-TA-434 (P) (12-Volt Motorcycle Batteries from Korea)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, (202) 252-1000.

Kenneth R. Mason,
Secretary.
June 13, 1989.

[FR Doc. 89-14677 Filed 6-16-89; 12:19 pm]
BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 19, 26, July 3, and 10, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 19

Tuesday, June 20

10:00 a.m.
Briefing on the Application of the Severe Accident Policy to the Lead Application for Advanced Light Water Reactors (Public Meeting).

Thursday, June 22

10:00 a.m.
Briefing on Status of Proposed Rule for License Renewal (Public Meeting).
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting).
a. Final Rule for Revisions to 10 CFR Part 2 to Improve the Hearing Process (Tentative).

Week of June 26—Tentative

Wednesday, June 28

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of July 3—Tentative

Thursday, July 6

10:00 a.m.
Briefing on Study of Adequacy of Regulatory Oversight of Materials Under General License (Public Meeting).
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).
2:00 p.m.
Briefing on Agency Human Factors Initiatives (Public Meeting).

Week of July 10—Tentative

Monday, July 10

2:00 p.m.
Briefing on Classification and Disposal of the Hanford Tank Waste (Public Meeting).

Tuesday, July 11

10:00 a.m.
Briefing on Staff Comments on DOE Site Characterization Plan for Yucca Mountain (Public Meeting).
2:00 p.m.
Briefing on Policy Statement on Rules for Exemption from Regulatory Control (Public Meeting).

Friday, July 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specifc subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.
Office of the Secretary
June 15, 1989.

[FR Doc. 89-14700 Filed 6-16-89; 2:08 pm]
BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 54, No. 117
Tuesday, June 20, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In the issue of Friday, June 2, 1989, on page 23739, in the first column, in the correction to rule document 89-12380, amendatory instruction 1 was inaccurately printed and should have appeared as follows:

1. On page 22465, in the third column, under the table heading "Periods to be reviewed", the third, fourth, and fifth entries should read "04/01/88-11/20/88", "04/01/88-11/20/88", and "4/01/88-03/31/89" respectively.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

LeHigh University; Decision on Application for Duty-Free Entry of Scientific Instrument

Correction

In notice document 89-14047 appearing on page 25148 in the issue of Tuesday, June 13, 1989, make the following corrections:

1. In the second column, in the fifth line, insert "into" between "take account".

2. In the same column, in the first complete paragraph, in the sixth line, the third word should read "received".

BILLING CODE 1505-01-D

DEPARTMENT OF INTERIOR

Bureau of Land Management

[WY-040-09-4200-90; WYW-89429]

Realty Action; Wyoming

Correction

In notice document 89-13103 beginning on page 23714 in the issue of Friday, June 2, 1989, make the following corrections:

1. On page 23714, in the third column, under "T. 36 N., R. 110 W.,", the second line should read "E½SW¼NE¼SW¼ SE¼, SE¼"; and the fourth line should read "SE¼, E½SW¼SW¼SW¼SE¼, SE¼".

2. On page 23715, in the first column, the signature should read "David E. Harper".

BILLING CODE 1505-01-D

federal register

Tuesday
June 20, 1989

Part II

Securities and Exchange Commission

17 CFR Parts 229, 230, 239, 240, and 249
Registration and Reporting Requirements for Employee Benefit Plans; Proposed Rule and Form

Forms Under Review by the Office of Management and Budget

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239, 240, and 249

[Release Nos. 33-6836; 34-26917; File No. S7-16-89]

RIN: 3235-AB79

Registration and Reporting Requirements for Employee Benefit Plans

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form.

SUMMARY: The Commission is publishing for comment rule and form proposals that would revise registration and reporting requirements relating to employee benefit plans to reduce costs and expedite the effectiveness and updating of Form S-8 registration statements relating to such plans, including: (1) Amendment of Form S-8 to streamline registration procedures under the Securities Act of 1933; (2) amendment of Form 11-K under the Securities Exchange Act of 1934 to eliminate the requirement for the annual description of the plan's operations; and (3) related new rules and rule amendments.

DATE: Comments should be received by August 15, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6009. Comment letters should refer to File No. S7-16-89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Larisa Dobriansky or Elizabeth Murphy, Office of Disclosure Policy, Division of Corporation Finance, at (202) 272-2589, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment: (1) Proposed amendment of Forms S-8,[1] S-3 [2] and F-3 [3] under the Securities Act of 1933 ("Securities Act"); [4]

(2) proposed new Rules 416A, 428 and 462 to be added to Regulation C under the Securities Act [5] and revisions to Rules 424,[6] 457,[7] and 475a[8] under Regulation C;

(3) proposed amendment of Item 512 [9] of Regulation S-K;[10] and

(4) proposed amendment of Form 11-K[11] and Rule 15d-21[12] under the Securities Exchange Act of 1934 ("Exchange Act").[13]

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[1] 17 CFR 239.16b.
[2] 17 CFR 239.13.
[3] 17 CFR 239.33.
[4] 15 U.S.C. 77a, *et seq.*
[5] 17 CFR 230.400—230.499.
[6] 17 CFR 230.424.
[7] 17 CFR 230.457.
[8] 17 CFR 230.475a.
[9] 17 CFR 229.512.
[10] 17 CFR 229.10—229.802.
[11] 17 CFR 249.311.
[12] 17 CFR 240.15d-21.
[13] 15 U.S.C. 78a, *et seq.*

I. Executive Summary

The Commission is proposing major revisions to the procedures for registering employee benefit plan securities on Form S-8. These proposals are intended to reduce costs to registrants by eliminating the need to prepare and file separate documents for federal securities law purposes that duplicate information otherwise provided to plan participants, while assuring timely delivery of information necessary for participants to make informed investment decisions.

Under the proposed approach, the plan information (excluding plan financial statements) and a statement of documents available upon request to plan participants,[14] currently required to be set forth in the Form S-8 registration statement, would be required to be delivered to participants, but would not be included in the Form S-8 registration statement and would not be required to be filed with the Commission pursuant to Rule 424. The information delivered to participants would not be required to be in the form of a customary prospectus. Instead, the information could be provided in one or several documents prepared in the ordinary course of employee communications, giving registrants the flexibility to use material written by company compensation or personnel specialists to advise employees about their benefits. Registrants also could use material required to be prepared for plan participants by the Employee Retirement Income Security Act ("ERISA"),[15] provided that the information is current for federal securities law purposes.

The plan information required to be delivered to participants, a written statement advising participants of the availability upon request of documents incorporated by reference in the registration statement and prospectus, and the documents incorporated by reference would constitute the prospectus satisfying the requirements of Securities Act Section 10(a) [16]

[14] For purposes of this release, the terms "plan participants," "participants," and "employees" refer to employees eligible to participate in a benefit plan, and with respect to the proposals, include consultants and advisors. *See* Section III.D.3., *infra*, regarding the proposed availability of Form S-8 for the issuance of securities to consultants and advisors.
[15] Pub. L. No. 93-406, 88 Stat. 832 (codified at 29 U.S.C. 1001, *et seq.*).
[16] 15 U.S.C. 77j(a).

pursuant to proposed new Rule 428. The documents containing registrant and plan financial information would be included in both the prospectus and registration statement through incorporation by reference of Exchange Act filings. The registrant would continue to be required to deliver the documents incorporated by reference upon a participant's request.[17]

Many employee benefit plans involve the registration not only of employer securities, but also of interests in the plan constituting separate securities.[18] To simplify the process of registering and reporting on plan interests, the Commission proposes to: (1) Amend Form 11–K, the annual report for employee benefit plans, to require only plan financial statements; (2) permit Securities Act registration of an indeterminate amount of plan interests; [19] and (3) simplify the calculation of filing fees by specifically providing that there are no additional fees for registered plan interests.[20]

In addition, the Commission proposes to relax the eligibility requirements for use of Form S–8. As proposed, the form could be used by any registrant reporting under the Exchange Act, rather than only those that have been reporting for 90 days. In lieu of a Rule 14a–3 annual report to security holders, registrants would be permitted to deliver to plan participants other documents containing substantially the same information.[21] Form S–8 also would be made available for securities issued pursuant to compensatory written contracts and for securities issued to compensate consultants and advisors employed by the registrant.

Other proposals to expedite employee benefit plan offerings and reduce costs and interpretive questions include: automatic effectiveness of Form S–8 registration statements upon filing; [22] clarification of filing fees for employee benefit plans; [23] simplification of procedures for the registration of additional plan securities; [24] modification of the Form S–8 disclosure requirements; and reorganization and amendment of the Form S–8's provisions for resale.[25]

[17] Both new and existing requirements to deliver information to employees would be set forth in proposed Rule 428(b), rather than as undertakings. Accordingly, the undertakings currently required by Item 512(f) of Regulation S–K would be rescinded.

[18] *See* n. 42, *infra*.

[19] Proposed new Rule 416A.

[20] Proposed Rule 457(h)(2).

[21] 17 CFR 240.14a–3.

[22] Proposed new Rule 462.

[23] Proposed revisions to Rule 457(h).

[24] Proposed General Instruction E.

[25] Proposed revisions to General Instruction C.

Part IV of the release contains two charts, the first showing proposed changes to Form S–8 and the second comparing the current undertakings to deliver information required pursuant to Item 512(f) of Regulation S–K, which would be rescinded, to the proposed requirements of Rule 428(b).

II. Background

Form S–8, for registration of securities offered pursuant to employee benefit plans,[26] has an abbreviated disclosure format reflecting the Commission's historic distinction between offerings made to employees primarily for compensatory and incentive purposes and offerings made to raise capital to finance a registrant's business. Securities offerings under employee benefit plans are undertaken to attract, compensate, and retain qualified employees. Recognizing the benefits to employees of participating in such plans, the Commission traditionally has exercised its rulemaking authority to reduce the costs and burdens incident to registration, where consistent with investor protection.[27]

[26] Securities Act Rule 405 [17 CFR 230.405] defines "employee benefit plan" as any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for employees, directors, trustees or officers. *See* Release Nos. 33–3480 (June 16, 1953) [18 FR 3688], 33–4533 (Aug. 30, 1962) [27 FR 9213] and 33–5767 (Nov. 22, 1976) [41 FR 52662].

[27] This form first was made available for registering certain securities offerings to employees in 1953. (Release No. 33–3480). Significant releases issued to amend and interpret Form S–8 are as follows: For rulemaking actions adopting Form S–8 and extending its availability to different types of securities and plans, *see*: Release No. 33–4533; and 33–5767. Release No. 33–5767 also provided for a reoffer prospectus to be used by selling employees. *See also* Release No. 33–4328 (Feb. 20, 1961) [26 FR 1756] providing that registrants need not transmit shareholder communications and other reports to employees that already receive such material. The release further states that such registrant information need not be furnished to the Commission if otherwise furnished pursuant to different requirements. Of particular significance are the steps taken in Release No. 33–6190 (Feb. 22, 1980) [45 FR 13438] permitting automatic effectiveness of initial filings on the twentieth day after filing and automatic effectiveness of post-effective amendments on filing, and Release No. 33–6202 (April 2, 1980) [45 FR 23653] extending the principles of incorporation by reference to Form S–8. *See also* Release No. 33–6188 (Feb. 1, 1980) [45 FR 8960] analyzing the application of the Securities Act to employee benefit plans; Release No. 33–6281, pt. IV(C) (Jan. 15, 1981) [46 FR 8446] outlining staff interpretive positions regarding the incorporation by reference in a Form S–8 prospectus of plan information contained in an ERISA Summary Plan Description and updating techniques; and Release No. 33–6371 (Dec. 23, 1981) [46 FR 63437] reminding Form S–8 registrants of the requirements regarding signatures and experts' consents.

A. Common Provisions of Plans Using Form S–8

Form S–8 is available to a wide range of employee benefit plans that offer employer securities to employees upon specified terms.[28] The following discusses the provisions commonly included in plans pursuant to which securities are registered on Form S–8.

1. Stock Acquisition Plans

Form S–8 is used most frequently to register common stock that is to be issued in connection with stock option plans. Stock options typically are granted to select groups of management or highly compensated employees, giving the holder the right to acquire employer stock at a fixed price for a stated period of time. Such executive compensation plans generally provide for either incentive stock options ("ISO"), which receive special tax treatment, or nonqualified stock options,[29] or allow the company the flexibility to grant either or both. Qualifying ISO plans meet the requirements of Section 422A of the Internal Revenue Code ("Code"), which among other things, sets limitations on the exercise price of the option at the time of the grant and on the holding period of the underlying stock following exercise of the ISO.[30] Neither the grant nor the exercise of ISOs is a taxable event for the employee.[31] In contrast,

[28] Depending on the nature of the plan, an employee may have the opportunity to invest money in employer securities either directly or through an intermediary, *e.g.*, a trust fund. As a general rule, registration under the Securities Act is required for offerings of interests or participations in pooled investment vehicles, as in the case of thrift or savings plans, where the plan is both voluntary and contributory on the part of the employee and permits the investment of employee money in the issuer's securities. (*See* Release No. 33–6188, pt. II(A)).

[29] Nonqualified stock options are also known as nonstatutory stock options.

[30] 26 U.S.C. 422A. Code Section 422A(b) [26 U.S.C. 422A(b)] mandates the features of an ISO plan. That section provides, in part, that the exercise price of an ISO must not be less than the fair market value of the underlying stock at the time of grant under a plan approved by the granting corporation's shareholders. Pursuant to Code Section 422A(a) [26 U.S.C. 422A(a)], an employee may not dispose of stock acquired under the plan within two years from the grant of the option or within one year after its exercise. An ISO plan is not subject to ERISA [Dept. of Labor Advis. Op. 79–50A (1979–1981 Transfer Binder) Pension Plan Guide (CCH) ¶25,413].

[31] Code Section 422A(a). The sale of the underlying stock is a taxable event for the employee; the granting corporation does not receive a deduction.

non-qualified plans are not subject to the limitations applicable to ISO plans and exercise of the option generally is a taxable event for the employee, but the granting corporation receives a corresponding deduction.

Stock acquisition plans using Form S–8 also may provide for the grant of options to all employees in compliance with Code Section 423.[32] Code Section 423 stock purchase plans must satisfy requirements similar to certain of those applicable to ISOs in order to receive special tax treatment with respect to the options issued.[33] However, unlike ISO plans designed to compensate key personnel, Section 423 plans must grant options to all employees of the registrant on a nondiscriminatory basis.[34]

Finally, plans using Form S–8 commonly contain provisions for the grant or sale of "restricted" stock.[35] Under such arrangements, the corporation may give stock outright for no consideration, receive partial or full consideration from the employee or reserve the flexibility to set the consideration within a broad range. Similarly, the corporation may reserve the right to establish the conditions that must be satisfied before the employee may exercise all ownership rights with respect to the securities.

2. ERISA Deferred Compensation Plans

A considerable number of plans that use Form S–8 are deferred compensation plans subject to ERISA. All of these ERISA plans are defined contribution plans [36] that provide for an employee's systematic deferral of income. Plan contributions are made to a trust, managed by a trustee, bank, investment advisor or employer. The trust may contain a single pool of securities or several investment funds with plan assets invested in a variety of investment media in addition to employer securities (such as fixed income government securities or a diversified portfolio of equity or debt securities).

ERISA plans are subject to reporting and disclosure requirements [37] and must adhere to fiduciary standards governing transactions between plans and interested persons.[38] The ERISA plans registered on Form S–8 generally qualify for preferential tax status [39] under Code Section 401(a) ("qualified plans").[40] Qualified plans must satisfy coverage, participation, vesting and benefit accrual standards that are intended to assure that plans are established for the exclusive benefit of employees and prevent discrimination in favor of highly compensated individuals.

The ERISA plans that register on Form S–8 generally are "thrift" or "savings" plans including a Code Section 401(k) [41] salary reduction arrangement, which allows employees to contribute part of their pretax earnings through payroll deductions. Employer contributions to thrift/savings plans usually are allocated in proportion to the amounts that are contributed by employees.

B. Current Form S–8 Requirements

1. Eligibility

Form S–8 may be used to register offers and sales of: (1) securities of an eligible issuer to its employees, or to employees of its subsidiaries or parents, pursuant to any employee benefit plan; and (2) interests in such plans that constitute separate securities and are required to be registered under the Securities Act.[42] Issuers [43] are eligible to use Form S–8 if, at the time of filing a registration statement on that form, they (a) have been subject to Exchange Act Section 13 or 15(d) [44] reporting requirements for at least 90 days; (b) have filed all required reports during the previous 12 months (or such shorter period as they have been required to file); and (c) have furnished or will furnish to security holders an annual report containing substantially the

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[32] 26 U.S.C. 423.

[33] Code Section 423(b) [26 U.S.C. 423(b)] stipulates, in part: The option price may not be less than the lesser of 85% of the fair market value of the underlying stock determined either (i) at the time of grant of the option or (ii) at the time of exercise of the option; while options must grant the same rights and privileges to each employee, the number of shares covered by the options may vary according to a uniform relationship to total compensation; and an employee cannot receive options with respect to stock with a fair market value in excess of $25,000 during any calendar year.

[34] Id.

[35] In this context, "restricted" refers to the fact that employee rights in the stock are contingent upon a future event and therefore have not vested.

[36] A defined contribution plan requires specified or determinable contributions. The amount of benefits paid depends, in addition to the level of contributions, on the degree of investment success and the amount of non-vested benefits allocated from employees whose interests terminate. Each employee in this type of plan has a separate account reflecting his or her interest in the plan investments.

[37] ERISA requires that financial and other plan information be reported to the Internal Revenue Service and the Department of Labor and disclosed to plan participants and their beneficiaries. Among other things, such requirements are intended to give plan participants information about their benefit rights and access to plan financial information. ERISA Section 101(b) [29 U.S.C. 1021(b)] requires the administrator of an ERISA plan to file with the Secretary of Labor an annual report, a summary plan description ("SPD"), a report of modifications and changes in the plan, and additional reports upon the termination of the plan. Under ERISA Section 104 [29 U.S.C. 1024], the administrator must furnish the SPD to each participant and each beneficiary who is receiving benefits under the plan. The SPD is, essentially, a written report describing the most significant features of a plan. The administrator also is required under that section to furnish participants a summary of the financial statements and schedules included in the annual report and such other information as is necessary to summarize that data fairly ("summary annual report"). The actual statements and schedules must be provided upon request. *See* n.73, *infra*, for ERISA timing requirements for the delivery of SPDs to participants.

[38] Part 4 of Title I of ERISA.

[39] An employer sponsoring a qualified retirement plan may deduct contributions to the plan in the year such contributions are made, subject to the limits of Section 404 of the Code [26 U.S.C. 404]. The employee on whose behalf such contributions are made will not realize gross income until such amounts are distributed. Finally, the trust itself is not taxed.

[40] 26 U.S.C. 401(a). Securities Act Section 3(a)(2) [15 U.S.C. 77c(a)(2)] exempts from registration under Section 5 of that Act [15 U.S.C. 77e] interests or participations in plans qualified under Internal Revenue Code Section 401 [26 U.S.C. 401], except such plans under which an amount in excess of the employer's contribution is allocated to the purchase of employer securities. Securities Act Release No. 33–6188, at pt. IV(B)(2); *Amicus curiae* brief filed by Commission in October, 1980 in *Newkirk* v. *Electric Co.*, No. 80–4202 (9th Cir.) (on appeal from 1979–1980 Fed. Sec. L. Rep. (CCH) ¶ 97,216 (N.D. Cal. 1979) (settled before decided on appeal)). Plans qualified under Section 401(a) are exempt from the provisions of the Investment Company Act of 1940 pursuant to Section (3)(c)(11) of that Act [15 U.S.C. 80a–3(c)(11)].

[41] 26 U.S.C. 401(k). A 401(k) plan in which employee monies, including voluntary salary reductions or deferrals, may be used to purchase employer securities is contributory on the part of employees and the employer's offer and sale of its securities must be registered or exempt from registration. Further, the plan interests are themselves securities and the Section 3(a)(2) exemption for interests in the plan is unavailable. *See* letter re *Diasonics, Inc.*, available Dec. 29, 1982. In that event, the offer and sale of plan interests must be registered or otherwise exempt from registration.

In the event that the 401(k) plan is a profit sharing or stock bonus plan that only provides for employer contributions and employees may elect annually either (1) to receive currently the employer's contribution or (2) to defer receipt and have the funds invested in the trust for distribution upon retirement, interests in the plan are not subject to the Securities Act even if the trust invests the deferred employer contribution in employer securities. This type of plan is not considered to be contributory on the part of employees because it does not involve out-of-pocket investments by employees of their own funds. For that reason, Securities Act registration is not required with respect to these plans. *See* Release No. 33–6281, pt. I(B).

[42] Whether a separate security in the form of a plan interest exists depends upon the facts and circumstances of the particular plan. Securities Act Release Nos. 33–6188, pt. II(A) and 33–6281, pts. I and II discuss some of the criteria to be considered in making such a determination. An employee's interest in an involuntary, non-contributory defined benefit plan is not a security. *International Brotherhood of Teamsters* v. *Daniel*, 439 U.S. 551 (1979).

[43] As used in Form S–8, the term "issuer" means the person whose securities are to be offered pursuant to the plan, *i.e.*, the employer or its parent or subsidiary. Form S–8 as revised would use the term "registrant" to be consistent with other forms and rules.

[44] 15 U.S.C. 78m and 78o(d).

information required by Exchange Act Rule 14a–3.[45]

Where plan interests are being registered, Form S–8 requires the plan, at the time of filing, either to (a) have been subject to Exchange Act Section 15(d)[46] for at least 90 days and be current in its filings thereunder; or (b) file, concurrently with the filing of the Form S–8 registration statement, an annual report on Form 11–K for its latest fiscal year (or, if the plan has not yet completed its first fiscal year, for a period ending not more than 90 days prior to the filing date). However, the requirement to file an annual report on Form 11–K does not apply if the plan was established less than 90 days prior to the Form S–8 filing date.[47] Therefore, the form may be used for the initial registration of interests in a newly established plan.

2. Disclosure Requirements

Form S–8 requires registrants to deliver information to employees concerning an employee benefit plan and the securities offered pursuant to the plan. The form requires specific information to be furnished participants concerning the terms, salient features and administration of the plan.[48] Registrant and plan financial information are included in the prospectus through the incorporation by reference of documents that the registrant and plan are required to file under the federal securities laws.[49] Updating of registrant information and plan financial statements generally is accomplished through incorporating subsequently filed Exchange Act reports by reference in the prospectus. Plan amendments and changes in plan information concerning investment results, tax consequences, and the number of eligible and actual participants ordinarily are disclosed in prospectus supplements or replacement pages, frequently referred to in the employee benefit plan context as "appendices."[50]

3. Delivery Requirements

Form S–8 requires that the registrant undertake to deliver to eligible employees, along with the prospectus, its annual report to security holders for its last fiscal year.[51] The registrant also undertakes to furnish to plan participants, who do not otherwise receive the documents, all reports, proxy statements, and other communications distributed to its shareholders at the time such materials are sent to the shareholders.[52] In addition, documents incorporated by reference in the prospectus must be furnished to participants upon request.[53] Prospectus appendices containing updated plan information may be furnished separately to employees who previously have received a prospectus, rather than being redelivered with the prospectus.[54] Appendices containing substantive changes must be filed with the Commission pursuant to Rule 424(b)(3).[55]

4. Automatic Effectiveness of Form S–8 Registration Statements

The Commission has provided for the automatic effectiveness of filings on Form S–8.[56] An initial filing on Form S–8 becomes effective automatically 20 days following the date of filing.[57] A post-effective amendment to a Form S–8 registration statement becomes effective automatically on the date of filing.[58]

III. Proposed Changes to Registration and Reporting Requirements

A. General

The changes proposed in this release are designed to facilitate further the registration of securities issued under employee benefit plans for compensatory and incentive purposes.[59] The principal difference from the current approach would be in the treatment of non-financial plan information. The proposed amendments to Form S–8 would eliminate the requirement that registrants prepare a separate document for federal securities law purposes in order to convey plan information to employees in connection with offers and sales of securities being made under an employee benefit plan. Instead, based on a recognition that materials containing plan information generally are prepared by personnel and employee relations offices, the proposals would require that complete and current plan information be delivered to employees in a timely fashion, but would not specify a legal format for that information, which could be contained in one or more documents provided to plan participants.[60] Furthermore, it

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[45] This information consists of audited financial statements, other specified financial information, management's discussion and analysis of financial condition and results of operations (Item 303 of Regulation S–K [17 CFR 229.303]), and other information about the company's business, management and securities.

[46] A plan becomes subject to Exchange Act Section 15(d) when plan interests are registered under the Securities Act. Plan interests generally are exempt from registration under Section 12(g) of the Exchange Act [15 U.S.C. 781(g)] pursuant to Rule 12h–1 [17 CFR 240.12h–1].

[47] Where a plan, whose interests are exempt from registration pursuant to Section 3(a)(2) of the Securities Act, is amended to allow employee contributions for the purchase of employer securities, the exemption is no longer available. In essence, such amendment is viewed as tantamount to the termination of the exempt plan and its replacement by a new plan. As a result, the plan would not be required to file an annual report at the time its securities are registered on Form S–8, if established within the previous 90 days. *See* letter re *Eastman Kodak Company*, available Feb. 6, 1984.

[48] The staff has permitted an issuer that prepares an SPD under ERISA to file that description as an exhibit to a Form S–8 registration statement and incorporate that document by reference into the prospectus in response to the form's requirements with respect to disclosure about the particulars of the plan. Letter re *Shop & Go, Inc.*, available Aug. 18, 1980. The proposed amendments would continue to permit registrants' use of information required to be prepared by ERISA, provided that such information is current for purposes of offers and sales under the federal securities law.

[49] Current Item 15 of Form S–8. The following documents must be incorporated into the prospectus by reference:

(1) the issuer's and, where plan interests are being registered, the plan's latest annual report filed pursuant to Exchange Act Sections 13 or 15(d), or, in the case of the issuer, the most recent prospectus filed pursuant to Securities Act Rule 424(b) [17 CFR 230.424(b)] containing certified financial statements for the issuer's latest fiscal year;

(2) all other reports filed pursuant to Exchange Act Sections 13(a) or 15(d) since the end of the fiscal year covered by the annual reports or prospectus referred to in (1) above;

(3) if capital stock to be offered is registered under Exchange Act Section 12 [15 U.S.C. 781], the description of that class contained in the Exchange Act registration statement, including any amendment or report updating the description; and

(4) all documents filed subsequently pursuant to Exchange Act Sections 13(a), 13(c), 14 and 15(d) [15 U.S.C. 78m (a) and (c), 78n, and 780(d), respectively].

[50] Letters re *Crocker National Corporation*, available Oct. 27, 1980 and *Allis-Chalmers*, available April 20, 1981.

[51] Item 512(f)(1) of Regulation S–K [17 CFR 229.512(f)(1)].

[52] Item 512(f)(2) of Regulation S–K [17 CFR 229.512(f)(2)].

[53] Item 2 of Form S–8; Item 502(c) of Regulation S–K [17 CFR 229.502(c)].

[54] *See* Release No. 33–6714, n.92 (May 27, 1987) [52 FR 21252].

[55] 17 CFR 230.424(b)(3).

[56] The Commission determined that eliminating routine staff review of Form S–8 filings would have little impact on the quality of disclosure in such filings, and accordingly reallocation of such resources would be in the public interest. *See* Release Nos. 33–6151 (November 19, 1979) [44 FR 67671], and 33–6190.

[57] Current General Instruction D to Form S–8. No delaying amendments are permitted for Form S–8 registration statements (Rule 473(d) [17 CFR 230.473(d)]), and no requests for acceleration of the 20-day period are entertained. Rule 475a provides that a pre-effective amendment to Form S–8 is deemed to have been filed with the consent of the Commission, so the original 20 day period does not recommence when such an amendment is filed.

[58] Rule 464 [17 CFR 230.464].

[59] As proposed, Form S–8 would be available for compensatory written contracts, see Section III.D.3. *infra*.

[60] *See* Release No. 33–4844 (August 5, 1966) [31 FR 10667] requesting registrants to use clear and understandable language in disclosing plan

Continued

would no longer be necessary to file this plan information with the Commission, either as part of the registration statement or pursuant to Rule 424.

As more fully discussed below, under the proposed amendments, a registrant would continue to be required to take three steps to disseminate material information to plan participants in connection with the offer and sale of employee benefit plan securities: (1) deliver to participants, and update as necessary, specified non-financial plan information; (2) accompany or precede the plan information with an annual report to security holders or other document containing audited financial statements and other specified information for the registrant's latest fiscal year;[61] and (3) notify participants of the availability, upon request, of documents containing registrant information and, if applicable, plan financial statements that are incorporated by reference in the Form S–8 registration statement.

In formulating the proposed amendments to Form S–8, the staff has benefited from the recommendations submitted by the American Society of Corporate Secretaries ("ASCS")[62] and the American Bar Association ("ABA").[63] The ASCS suggested eliminating the Form S–8 prospectus requirement with registrants undertaking in the registration statement to provide disclosure relating to such plans to all plan participants and to update such information.

The ABA also recommended the elimination of the Form S–8 prospectus in its current form but would substitute therefor a disclosure document that the issuer would otherwise distribute to eligible employees: an SPD for ERISA plans, and a plan document for non-ERISA plans. The disclosure document would have to be filed as an exhibit to the registration statement and distributed to all plan participants. Thereafter, issuers would disseminate updated plan information pursuant to undertakings in the registration statement. The ABA further recommended that the registration of interests in employee benefit plans no longer be required.[64]

B. Prospectus Requirements

1. Section 10(a) Prospectus Content, Delivery and Updating; Exemption from Rule 424

Proposed Form S–8 would dispense with the use of a customary prospectus filed with the registration statement as the means of providing disclosure to plan participants. In its place, registrants would meet their Securities Act Section 5 [65] prospectus delivery obligations by providing plan participants: (1) document(s) containing the plan information required by Form S–8, updated as necessary; [66] and (2) a written statement advising participants of the availability, upon request, of the documents incorporated by reference in the registration statement and stating that those documents are incorporated by reference in the prospectus.[67] These delivered documents, together with the documents incorporated by reference,[68] would constitute, pursuant to paragraph (a)(1) of proposed new Rule 428, a prospectus meeting the requirements of Section 10(a) of the Securities Act ("Section 10(a) prospectus").[69] The Section 10(a) prospectus would not be required to be filed with the Commission pursuant to Rule 424, as proposed to be amended. Paragraph (b) of proposed Rule 428 would specify the mechanics of disseminating and updating the required plan information.[70] Finally, paragraph (c) of proposed Rule 428 would define the terms "employee" and "employee benefit plan" in the same manner as Form S–8, as proposed to be revised.

Comment is requested on whether only required plan information contained in each of the delivered documents, rather than the entire document, should be deemed part of the Section 10(a) prospectus. If the Section 10(a) prospectus were to contain only required portions of the documents, an adequate means of identification of such portions, for liability purposes, would be necessary. Therefore, commentators favoring a Section 10(a) prospectus covering only required information, rather than the entire document, should recommend a practical means for identification of this information.

Under the proposals, a registrant could deliver to plan participants information concerning the plan, its operation and participants' rights and obligations under the plan in one or more documents that the registrant prepares in the ordinary course of

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information in the prospectus. The release noted that a booklet describing a plan in simple, non-technical terms might be substituted for a portion of the prospectus, or expanded to serve as the prospectus.

[61] *See* Section III.D.2., *infra*.

[62] Letters to Catherine C. McCoy, Associate Director, Division of Corporation Finance, from Morey W. McDaniel and Karl R. Barnickol, Members, S–8 Subcommittee of ASCS Securities Law Committee, American Society of Corporate Secretaries, Inc. (December 21, 1984 and November 27, 1985, respectively).

[63] Letter to Catherine C. McCoy, Associate Director, Division of Corporation Finance, from William J. Rainey, Chairman, ABA Task Force on Registration of Employee Benefit Plans, American Bar Association (June 10, 1985).

[64] *See* Section III.D.5 and III.E, *infra*, for proposals streamlining the registration of plan interests and the plan annual report on Form 11–K.

[65] Securities Act Section 5(b)(2) [15 U.S.C. 77e(b)(2)] requires that a Section 10(a) prospectus accompany or precede the delivery for sale or after sale of any security with respect to which a registration statement has been filed.

[66] Part I, Item 1 of proposed Form S–8. *See* Section III.D.7, *infra*, for a discussion of the modification of the disclosure requirements of current Form S–8.

[67] Part I, Item 2 of proposed Form S–8.

[68] Part II, Item 3 of proposed Form S–8 would retain current requirements (*see* n.49, *supra*, for the current requirements); documents would be incorporated by reference in the registration statement as well as in the prospectus. In addition, proposed Item 3 would permit incorporation by reference of an effective Exchange Act registration statement on Form 10 [17 CFR 249.210] or 20–F [17 CFR 249.220f] as an alternative to an annual report or Rule 424(b) prospectus. The following documents would be incorporated by reference into the registration statement and Section 10(a) prospectus:

(1) The registrant's latest annual report and, where plan interests are being registered, the plan's latest annual financial report filed pursuant to Exchange Act Section 13(a) or 15(d), or specified other documents containing audited financial statements for the registrant's latest fiscal year.

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the document referred to in (1) above;

(3) If the class of securities to be offered is registered under Exchange Act Section 12, the description of that class contained in a registration statement filed thereunder, including any amendment or report filed for the purpose of updating that description; and

(4) All documents filed subsequently by the registrant pursuant to Exchange Act Sections 13(a), 13(c), 14 and 15(d).

An accountant's consent would continue to be required with respect to audited financial statements incorporated by reference. The consent would be filed initially as an exhibit to the registration statement, and then as an exhibit to each subsequently filed annual report on Form 10–K [17 CFR 249.310] or 11–K incorporated by reference. *See* Rule 439 [17 CFR 230.439].

[69] Section 10(a) of the Securities Act requires that, except as provided in other paragraphs of Section 10, a prospectus shall contain specified Schedule A [15 U.S.C. Schedule A] information contained in the registration statement. The information required by Schedule A generally would be included in proposed Form S–8 to the same extent as in current Form S–8. Paragraph (c) of Section 10 [15 U.S.C. 77j(c)] allows the Commission to include in a prospectus additional information, as necessary or appropriate in the public interest or for the protection of investors. Accordingly, although plan information would not be contained in a Form S–8 registration statement, the Commission is requiring plan information to be a part of the Section 10(a) prospectus, pursuant to proposed new Rule 428(a)(1).

[70] Proposed Rule 428(b) would address the registrant's requirements concerning the delivery of non-financial plan information required by Part I of Form S–8 and the delivery, upon request, of registrant (and plan, if applicable) information incorporated by reference in Part II of the registration statement. Other information delivery requirements relating to Form S–8 now required as undertakings pursuant to Item 512(f) of Regulation S–K would be revised as appropriate and moved to Rule 428(b). Item 512(f) would be rescinded.

business. A registrant could, of course, elect to prepare and deliver a single document resembling a customary prospectus, but the new Form S–8 would permit a variety of other approaches. For example, one document might set forth the terms and salient features of the plan, while a separate written statement would discuss current tax information.[71] Registrants could use SPDs as the basic disclosure document, as permitted currently.[72] However, although ERISA allows several months after commencement of a plan for preparation of an SPD,[73] it might have to be completed prior to the ERISA deadline in order to be available for use in connection with offers and sales of securities under the plans.

Because the plan document(s) and required written statement concerning availability of information would not be filed with the Commission, registrants would be required to date each such document and include a printed or stamped legend stating: "This material constitutes part of the prospectus covering these securities, which have been registered under the Securities Act of 1933."[74] Registrants also would be required to maintain a file of the legended documents for three years after the securities had been offered or sold and to furnish a copy of those materials to the Commission or its staff upon request.[75] Comment is requested on whether the three year file maintenance requirement is adequate or the period should be longer, such as five or seven years.

If questions should arise as to the adequacy of the plan information constituting part of the Section 10(a) prospectus, the legending and file maintenance requirements should facilitate identification of those communications that constitute the Section 10(a) prospectus and minimize disputes about the registrant's intention to rely on a particular document to meet its Section 5 prospectus delivery obligation. Of course, any delivered plan information which is not made a part of the Section 10(a) prospectus would continue to be subject to the antifraud provisions of the federal securities laws.[76]

Pursuant to Securities Act Section 12(2),[77] a registrant would be required to deliver current and complete plan information. Accordingly, documents containing plan information would have to be updated to reflect material changes.[78] The plan information could be updated simply by providing plan participants with a letter or memorandum. Of course, care would have to be taken that the information is presented in an organized and understandable fashion. As with information initially furnished, the updated information would have to be stamped with the same statement indicating that such information constituted part of the Section 10(a) prospectus. Existing participants would be furnished the updating material; the registrant would be required to re-deliver previously furnished document(s) only upon a participant's request. If updates become so numerous that they obscure plan disclosures, for new plan participants, a registrant would be required to revise the original plan document(s).[79] Comment is requested on whether the proposed approach for delivery of plan information is a practical method and provides employees with adequate safeguards under the federal securities laws.

2. Section 10(a) Prospectus Liability

Under the proposed amendments, the narrative plan information would continue to be subject to Section 12(2) of the Securities Act, as well as Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, but would not be subject to Securities Act Section 11.[80] liability. Section 11, as well as the other civil liability and antifraud provisions, would continue to apply to the registrant's and the plan's filings that are incorporated by reference in the Form S–8 registration statement.

The compensatory nature of security offerings under employee benefit plans and the relationship between registrants and plan participants provide incentives for the preparation and distribution of accurate and complete plan information even though the registrant would no longer be subject to strict liability with respect to that information.[81] Further, Section 12(2) and the antifraud provisions would continue to apply to the information. Accordingly, the proposed approach should not increase the risk of inadequate disclosure to plan participants.

C. Registration Statement Requirements

The Form S–8 registration statement, as proposed, would no longer contain narrative plan information or the Section 10(a) prospectus in any form.[82] While Part I of Form S–8 would continue to set forth requirements for disclosure of information about the plan, documents containing that information would not be filed with the Commission, as noted above. In essence, the registration statement as filed would consist of: the facing page; enumeration of documents incorporated by reference (proposed Item 3); description of securities (proposed Item 4); interests of named experts and counsel (proposed Item 5); indemnification of directors and officers (proposed Item 6); exhibits (proposed Item 7); undertakings (proposed Item 8);[83] and the signature page. As currently, registrant (and plan, if applicable) documents incorporated by reference would not be filed with the registration statement, but Section 11 liability would continue to apply to this information.

Documents containing registrant information or plan financial statements incorporated by reference in the registration statement would continue to be subject to the updating requirements

[71] Tax information is currently required by Item 4 of Form S–8 and the proposals would retain that disclosure requirement. See proposed new Item 1(a)(3).

[72] *See* n.48, *supra*.

[73] ERISA requires the plan administrator to furnish an SPD to each plan participant either within 90 days after an employee becomes participant or within 120 days after the plan becomes subject to ERISA [29 U.S.C. 1024(b)(1)].

[74] Proposed Rule 428(b)(1).

[75] Proposed Rule 428(a)(2). The three-year period comports with the statute of limitations in Section 13 of the Securities Act [77 U.S.C. 77m].

[76] Securities Act Section 17(a), [15 U.S.C. 77q(a); Exchange Act Section 10(b) [15 U.S.C. 78j(b) and Rule 10b–5 thereunder [17 CFR 240.10b–5].

[77] 15 U.S.C. 77*l*(2).

[78] The updating procedures for plan and other information are briefly described in proposed General Instruction G to Form S–8.

[79] Proposed Rule 428(b)(1). Cf. *In re Franchard Corp.*, 42 S.E.C. 163, 184–85 (1964). *See also* Release No. 33–4844, requesting the cooperation of registrants in improving the clarity of prospectuses used in connection with securities registered on Form S–8.

[80] 15 U.S.C. 77k. Section 11 of the Securities Act imposes liability for material misstatements or omissions contained in a registration statement when it becomes effective. That section imposes strict liability on the issuer. Section 11 also imposes liability on a wide variety of other defendants, such as persons who signed the registration statement, directors of the issuer at the time the statement is filed, persons who consented to be named in the statement, experts who consented to be named in the statement, and underwriters.

[81] A review of the reported cases asserting liability under the federal securities laws in connection with employee benefit plans indicates that they have been based upon Sections 17(a) and 12(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b–5 thereunder, rather than Section 11.

[82] Section 7 of the Securities Act [15 U.S.C. 77g] permits the Commission to exclude information or documents from the registration statement.

[83] While Item 512(f) of Regulation S–K which currently requires undertakings applicable to Form S–8, would be rescinded, other undertakings would continue to be required as specified in proposed Item 8.

of Item 512(a) of Regulation S–K.[84] As is currently the case, such documents would be updated automatically through the forward incorporation of subsequently filed Exchange Act reports into the registration statement. Pursuant to proposed Rule 428, these documents would constitute part of the Section 10(a) prospectus as well.[85]

The registrant would be required to describe any material changes in the registrant's affairs that have occurred since the end of the latest fiscal year, but have not been previously included in Exchange Act reports, in an Exchange Act filing, which would be incorporated by reference into the registration statement. This would preserve Section 11 liability on all registrant information. This procedure would differ from the current Form S–8 provisions, which permit such information to be set forth in the prospectus as an alternative to being disclosed in an Exchange Act filing.[86]

D. Other Proposed Amendments to Form S–8

In addition to revising the system for delivery of nonfinancial plan information and eliminating its filing with the Commission, the Commission also is proposing other amendments to Form S–8 and related rules. Generally, the proposed amendments relax conditions to the use of Form S–8, simplify the registration process, and streamline further the form's disclosure requirements. This section describes the procedural and substantive changes being proposed.[87]

1. Elimination of Ninety-Day Eligibility Requirement

The proposed amendments to Form S–8 would eliminate the requirement that a registrant be subject to the reporting requirements of Exchange Act Section 13 or 15(d) for 90 days prior to filing a registration statement on Form S–8.[88] As proposed, registrants would need only to be subject to those reporting obligations prior to the time the Form S–8 registration statement was filed, and to have filed all required reports during the preceding year or such shorter period that the registrant was subject to those reporting requirements.[89]

Retention of the requirement that Form S–8 registrants be subject to Exchange Act reporting obligations would provide for current public information. Information in an effective Securities Act or Exchange Act registration statement would be available to the marketplace and the registrant would be subject to the continuous reporting system under the Exchange Act. As a result, the business and financial information regarding the registrant would be available to employees. Comment is requested on whether there is any need to retain the 90-day eligibility requirement for using Form S–8.

2. Requirements for the Delivery of Registrant Information

Currently, to be eligible to use Form S–8, a registrant must either have furnished, at the time of filing a Form S–8 registration statement, an annual report to security holders for its latest fiscal year containing substantially the information required by Exchange Act Rule 14a–3, or furnish such a report after the filing of the registration statement.[90] Whenever the prospectus is delivered to participants, the annual report to security holders must accompany it, unless previously furnished.[91]

The Commission proposes to rescind the mandated use of the annual report to security holders and provide flexibility by permitting a registrant to use any one of several documents to provide this information to participants in lieu of an annual report to security holders:[92] a Securities Act Rule 424(b) prospectus, an annual report on Form 10–K or 20–F,[93] or an effective registration statement filed on Form 10 or 20–F under the Exchange Act.[94] A registrant would be required to deliver any one of these documents, containing audited financial statements for its latest fiscal year, to participants along with the non-financial plan information. Thus, a registrant not subject to the annual report to security holders requirement of Rule 14a–3 or Rule 14c–3,[95] and not choosing to prepare such a report, would nonetheless be eligible to use Form S–8.

Finally, the proposals would continue to obligate a Form S–8 registrant to furnish on a continuing basis shareholder communications and other reports to plan participants who do not otherwise receive such information.[96] However, participants in a plan who elect not to invest in employer securities do not have the same need for these shareholder communications; therefore, the Commission is proposing to codify staff interpretation by requiring delivery of such information only to those who are participating in plan funds that invest in employer securities or those who request that information.[97] In addition, registrants would no longer be required under the proposals to deliver shareholder communications and other reports "in the same manner" as those materials are sent to shareholders. This change would permit registrants to deliver such information by any means reasonably calculated to reach plan participants, provided that delivery is no less prompt than for shareholders. For example, "desk-top" delivery would be permissible.[98]

3. Use of Form S–8 for Securities Issued Pursuant to Compensatory Contracts; to Consultants and Advisors; and to Former Employees

Several changes to Form S–8 are proposed in order to permit its use for a wider universe of plan participants and employee compensatory arrangements. First, the proposed amendment to General Instruction A.1(a) would specify that the form is available not only for securities offered pursuant to an employee benefit plan, but also for securities offered pursuant to compensatory arrangements that take the form of individually negotiated written contracts.

Further, proposed Form S–8 could be used by registrants for offerings to consultants or advisors pursuant to compensatory benefit plans or written contracts. General Instruction A.1(a) of

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[84] 17 CFR 229.512(a). *See* the proviso following Item 512(a)(1) [17 CFR 229.512(a)(1).]

[85] *See* Section III.B.1., *supra*.

[86] Current Item 16 of Form S–8.

[87] The proposals also include changes in wording and arrangement to clarify requirements and maintain consistency.

[88] General Instruction A(1) to current Form S–8.

[89] General Instruction A.1 to proposed Form S–8.

[90] General Instruction A(1) to current Form S–8.

[91] Current Item 512(f)(1) of Regulation S–K. *See* n.45, *supra*, for the information required by Rule 14a–3.

[92] Proposed Rule 428(b)(2).

[93] The Commission proposes to rescind current Item 512(f)(4) of Regulation S–K, relating to the use of Form 20–F by foreign private issuers in lieu of the annual report to security holders, because proposed Rule 428(b)(2) would specifically permit such issuers to use Form 20–F or Form F–1. In addition, current Instruction E to Form S–8, relating to foreign private issuers, is proposed to be rescinded as unnecessary because the use of Form 20–F would be provided for in proposed Rule 428(b)(2) and the second part of the Instruction, concerning reoffers, would be dealt with in General Instruction C (*see* Section III.D.8, *infra*).

[94] The documents used would have to contain substantially the same information as required by Rule 14a–3, particularly the management's discussion and analysis, except for certain documents delivered by foreign private issuers using Form 20–F (Forms F–1 [17 CFR 239.31] and 20–F) and registrants complying with the requirements of Form S–18 [17 CFR 239.28] (Forms S–18 and 10–K), which would contain the textual and financial information appropriate to those forms.

[95] 17 CFR 240.14c–3.

[96] Proposed Rule 428(b)(5): current Item 512(f)(2) of Regulation S–K.

[97] Letter re *Union Carbide*, available Dec. 14, 1981.

[98] Letter re *Revlon, Inc.*, available July 6, 1984.

Form S–8 would define the term "employee" to include consultants or advisors, provided that bona fide services are rendered by such persons to a registrant in connection with its business and such services are not in connection with the offering or sale of securities in a capital-raising transaction. This proposed amendment is based on the conditions set forth in Securities Act Rule 701[99] for exempting from registration offers and sales of securities by non-reporting companies pursuant to certain compensatory benefit plans or written contracts.[100] Securities issuances to consultants and advisors were included within the scope of that exemption in response to public comments.[101] Commentators argued that if securities issuances to such parties are primarily compensatory rather than for capital-raising purposes, there is no meaningful basis for distinguishing between issuances to regular employees and those to consultants or advisors employed by the registrant. Comment is requested on the advisability of making Form S–8 available for offerings to consultants and advisors and on the appropriateness of the proposed standard that would apply to such issuances.

In addition, the Commission is proposing to codify the staff's interpretive position regarding the availability of Form S–8 for certain transactions involving former employees who had been granted stock options.[102] Form S–8 would be available for the exercise of non-transferable employee benefit plan stock options and the subsequent sale of the securities[103] even if the participant were no longer employed at the time of exercise of sale, so long as such exercises were not prohibited under the plan.

4. Immediate Effectiveness of Form S–8 Registration Statements

Proposed new Rule 462 would provide for the automatic effectiveness of a Form S–8 registration statement upon filing.[104] Based on its experience with the 20-day waiting period currently required, as well as the automatic effectiveness of post-effective amendments on Form S–8, the Commission believes that eliminating the waiting period would have little impact on the quality of disclosure in such filings and would not be detrimental to plan participants, and that the public interest would be served by prompt effectiveness of such filings.[105]

5. Automatic Registration of Plan Interests; Method of Calculating Fees

The Commission is proposing to add new Rule 416A to provide that a registration statement covering both registrant securities offered pursuant to an employee benefit plan and plan interests that constitute separate securities would be deemed to cover such plan interests in an indeterminate amount.[106] The facing page of Form S–8 would be modified to require registrants to include a statement, where appropriate, indicating that the registration statement covers an indeterminate amount of plan interests. In effect, plan interests would be automatically registered together with the other securities being offered. Proposed Rule 416A, along with the revision of the filing fee rule to clarify that no separate fee is payable with respect to plan interests, as discussed below, should reduce interpretive questions and practical difficulties associated with the mechanics of registering plan interests.

A proposed revision of Rule 457(h) [107] would clarify and simplify the method for calculating the aggregate offering price and the amount of the registration fee for Form S–8 registration statements. Currently, the aggregate offering price and the amount of the registration fee for such offerings is computed with respect to the aggregate contributions of employees, except that employer contributions are included if employees may choose the medium in which the employer's contributions are to be invested. The proposal would base the registration fee on the aggregate offering price for the maximum amount of the registrant's securities (other than plan interests) covered by the registration statement.[108] If the offering price per share (or the option price) were unknown, the fee would be calculated on the basis of the market price of registrant securities of the same class as those to be offered, as determined in accordance with paragraph (c) of Rule 457.[109] There would be no separate fee calculation for plan interests.[110] A paragraph would be added to clarify that the inclusion of a reoffer prospectus on Form S–8 for employer securities issued and sold to employees under that registration statement does not result in an additional filing fee. As currently, a fee would have to be paid for additional securities registered for resale that had been sold to an employee in reliance on an exemption from registration.[111]

6. Registration of Additional Securities

When a registrant increases the number of securities that may be issued pursuant to an existing plan, it is required to file a new registration statement to cover the additional securities.[112] Currently, when such a new registration statement is filed, Rule 429 [113] allows the previously registered securities to be offered and sold through the delivery of the current prospectus filed as part of the new registration statement. The prospectus must include all information required by Form S–8 for the securities covered by both the earlier registration statement and the later one. Thus, a registrant can disseminate to employees a single prospectus in connection with offerings of employee benefit plan securities registered under several registration statements.

The procedure specified by Rule 429, which contemplates the filing of a prospectus, would not be available for registration statements on proposed Form S–8. Use of a combined prospectus

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[99] 17 CFR 230.701.

[100] Release No. 33–6768 [April 14, 1988] [53 FR 12918].

[101] Rule 701 was initially proposed in Release No. 33–6683 [January 16, 1987] [52 FR 3015].

[102] Proposed General Instruction A.1(a) to Form S–8. *See* Letters to Donald W. Glazer, Co-Chairman, Subcommittee on Employee Benefits and Executive Compensation, American Bar Association from William E. Morley, Associate Director (Legal), Division of Corporation Finance, Feb. 14, 1989 and May 1, 1989.

[103] *See* Section III.D.8, *infra*, for discussion of the resale provisions in Form S–8.

[104] Rule 475a would be amended to remove the reference to pre-effective amendments to Form S–8, since there would be none. Post-effective amendments would continue to be effective upon filing as provided by Rule 464.

[105] General Instruction D to Form S–8 would be revised to state that registration statements become effective on filing and eliminate the references to pre-effective amendments. In addition, this Instruction would be modified to: (1) clarify that requests for confidential treatment of portions of Exchange Act documents incorporated by reference into the Form S–8 be treated in the same manner as such requests made with respect to the Form S–8 under the Securities Act; and (2) remove as unnecessary the requirements to furnish the Commission copies of amendments marked to show changes and copies of documents incorporated by reference.

[106] Proposed new General Instruction F would direct registrants' attention to the Rule.

[107] 17 CFR 230.457(h).

[108] Proposed Rule 457(h)(1).

[109] 17 CFR 230.457(c). Rule 457(c) describes the method for valuing securities that are subject to market fluctuations.

[110] Proposed Rule 457(h)(2).

[111] Proposed Rule 457(h)(3). The circumstances under which securities may be registered on Form S–8 for resale without the original issuance to employees having been registered on Form S–8 are addressed in Section III.D.8, *infra*.

[112] The Securities Act does not provide for registration of additional securities by post-effective amendment, as provided in the Investment Company Act of 1940 [15 U.S.C. 80a–1, *et seq.*]. *See* current Rule 413.

[113] 17 CFR 230.429.

would be possible, however, without the Rule 429 procedure, because registrants would have the flexibility to modify prospectuses without filing them. Proposed General Instruction E to Form S–8 would provide a procedure for the filing of a simplified registration statement covering additional securities to be used in connection with the same employee benefit plan. The registration statement would not need to repeat previously filed information, and could consist only of the facing page; a statement indicating that the contents of the earlier registration statement, identified by file number, are incorporated by reference; the signature page; the legality opinion; [114] the consents of the accountant and counsel [115] and any additional required information not filed earlier.[116] No prospectus would be filed, except for a reoffer prospectus, if it differed substantively from the one used in connection with the earlier registration statement. Registrants would continue to update the Section 10(a) prospectus by delivery of plan information to employees. A filing fee would be paid only with respect to the additional securities being registered.

7. Modification of Disclosure Requirements

The wording and arrangement of the disclosure requirements of Form S–8 would be revised to reflect the basic approach underlying the proposed amendments, clarify and simplify disclosure requirements, and facilitate the use of SPDs or plan documents to the maximum extent in furnishing plan information to participants. Apart from editorial changes, the proposed amendments also would effect the substantive revisions discussed below.

Form S–8, as proposed, would not contain the requirements called for by current Items 1–3. These items require the information specified by Items 501, 502 and 503 of Regulation S–K.[117] This information generally is either inapplicable to employee benefit plans or does not need to be included in a Section 10(a) prospectus structured as an informal group of documents. The only requirement in Items 1–3 proposed to be retained is that calling for the information in Item 502(c), which requires the registrant to include an undertaking to provide upon request copies of documents incorporated by reference. Rather than implementing this requirement through an undertaking, the Commission proposes to include it among the delivery requirements mandated by proposed Rule 428(b),[118] and require that employees be given a written statement that the documents incorporated by reference are available upon request.[119]

Current Items 4–13 call for plan information and would be regrouped as new Item 1. This Item would continue to require that the essential plan information be given to participants.[120] While many of the items remain intact, the proposals delete unnecessary requirements,[121] eliminate the requirement to present information about outstanding options with different prices and expiration dates,[122] and eliminate the need for certain disclosure regarding aspects of ERISA plans that are substantively regulated pursuant to ERISA requirements.[123] Comment is requested on whether the proposed plan information requirements provide sufficient information for participants to make investment decisions, and on whether Item 1 could be further streamlined to delete any requirements as generally unnecessary, or as not useful for ERISA plans because the substantive requirements of ERISA duplicate the disclosure. Commentators also are requested to address whether it would be practical to include the specified information in documents not specifically tailored to comply with these requirements, as is contemplated by the proposed scheme. Finally, the Commission requests comment on whether plan disclosure requirements should be much more general, with each registrant having the flexibility to provide plan information which in its opinion is material to participants under the circumstances.

Currently, Item 12 of Form S–8 requires registrants to provide five-year financial data in tabular form about each investment medium, if participants can direct all or any part of the assets under a plan to two or more investment media. The proposals would eliminate the specific time period of the information but would continue to require that registrants set forth financial data which, in the opinion of the registrant, would enable participants to make informed investment decisions concerning the investment media. The financial data could be in tabular form or other meaningful presentation. Registrants would be required to provide performance information in sufficient detail to apprise participants of material trends and significant changes in the performance of alternative investment vehicles and to enable them to make meaningful comparisons. Comment is solicited on whether it would be preferable to specify a definite time period for disclosing performance data and what the appropriate length of time should be, for example 5 years, 3 years or 2 years.

Item 14 of current Form S–8 requires either a description of the securities being offered as called for by Item 202 of Regulation S–K,[124] or, if such securities constitute capital stock registered under section 12 of the Exchange Act, that the description be incorporated by reference from Exchange Act documents. This requirement would be moved to Part II of the proposed Form S–8, and the incorporation by reference of the description of section 12 securities would no longer be limited to capital stock.[125] However, unless capital stock were being offered, delivered plan documents also would be required to contain a description of the material characteristics of the securities.[126]

Current Item 15, "Incorporation of Certain Documents by Reference," would be moved to Part II and thus would incorporate the documents by reference in the registration statement (as well as the prospectus, as currently).[127] As discussed above, the list of documents permitted to be incorporated by reference would be expanded to include an effective registration statement on Form 10 or 20–F.[128] Current Item 16, "Additional Information," would be rescinded because such information would be required to be included in Exchange Act

[114] Item 601(b)(5) of Regulation S–K [17 CFR 229.601(b)(5)].

[115] Item 601(b)(24) of Regulation S–K [17 CFR 229.601(b)(24)].

[116] For example, if an exhibit not required in the earlier registration statement was required in the later one, the latter would have to include the new exhibit in Part II.

[117] 17 CFR 229.501, 502, 503; "Forepart of Registration Statement and Outside Front Cover Page of Prospectus," "Inside Front and Outside Back Cover Pages of Prospectus," and "Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges."

[118] Proposed Rule 428(b)(3).

[119] Proposed Item 2 of Form S–8.

[120] *See* Section IV.A, *infra*, for a chart describing the changes with particularity.

[121] *E.g.*, the requirements to provide the number of employee participants and the number eligible to participate (current Item 4(d)).

[122] Current Item 6.

[123] Part 4 of Title I of ERISA; *see* n.37, *supra*. *See* current Items 11 and 12 relating to administration of the plan and investment of funds, and their analogues in proposed Items 1(h)(1), 1(h)(2), 1(i)(2), and 1(i)(3), which require disclosure only for a plan not subject to ERISA. ERISA sections 103 (b) and (c) [29 U.S.C. 1023 (b) and (c)] require information in a plan annual report that is comparable to those required by these items.

[124] 17 CFR 229.202.

[125] Proposed Items 3(c) and 4 of Form S–8.

[126] Proposed Item 1(b)(2) of Form S–8.

[127] Proposed Item 3.

[128] *See* n.68, *supra*.

reports.[129] Current Item 17, "Interests of Named Experts or Counsel," would be moved to Part II.[130]

Form S–8 would no longer require that registrants disclose to employees the Commission's position on indemnification for Securities Act liabilities (current Item 18), but instead would require registrants to include in their registration statements the undertaking contained in Item 512(i) of Regulation S–K, to be redesignated as Item 512(h).[131] By the terms of that undertaking, a registrant agrees to submit to a court of appropriate jurisdiction, in connection with any claim for indemnification against liability under the Securities Act, the question of whether such indemnification is against public policy under the Act. This revision would comport with the staff's current interpretive position that Form S–8 registrants may include the undertaking in Part II rather than provide the Item 18 information on indemnification in the prospectus. In addition, Form S–8 would continue to require disclosure in Part II of the registration statement of a registrant's policies and arrangements with respect to the indemnification of its directors and officers (current Item 19, proposed Item 6).

The proposals would not modify any of the exhibit requirements for registration statements on Form S–8,[132] but comment is solicited on whether any are unnecessary and should be rescinded. Since Form 10–K also requires the exhibits called for by Item 601(b)(4) of Regulation S–K, instruments defining the rights of security holders, and Item 601(b)(29), information furnished to state insurance regulatory authorities,[133] comment is particularly requested on whether these exhibits should be retained.

Finally, Instruction 1 to the Form S–8 signature requirements would be amended to restore the requirement that the chief financial officer sign the registration statement, which was mistakenly omitted when the form was amended.[134]

8. Reoffers and Resales

General Instruction C to Form S–8 would be revised to clarify, and in some cases modify, the procedures for registering on that form reoffers and resales of employee benefit plan securities. Such offerings would continue to be made through a separate reoffer prospectus in customary format filed under cover of Form S–8 but containing the disclosure specified in Part I of Form S–3.[135] Certain volume limitations would continue to apply if the registrant did not meet the registrant requirements of Form S–3.[136]

Generally, current requirements for resales registered on Form S–8 would be retained but clarified and restructured to make more understandable the distinction between treatment of control securities (securities issued under an employee benefit plan registered on the Form S–8 to be reoffered by affiliates) [137] and restricted securities [138] (previously unregistered securities issued under an employee benefit plan pursuant to a Securities Act exemption to affiliates or non-affiliates).[139] Three notable changes are proposed.

First, restricted securities could be registered for reoffer in any amount, provided they have been acquired by the employee prior to the filing of the registration statement. Currently, General Instruction C limits the amount of restricted securities registered for resale to ten percent of the total number of shares issuable under the plan to which the Form S–8 registration statement relates.[140] The Commission believes this limitation is unnecessary, particularly as each seller of either restricted securities or control stock would continue to be subject to Rule 144(e) volume limitations, unless the registrant was eligible to use Form S–3 or F–3. However, comment is solicited on whether the volume limitation for restricted securities should be retained, but raised above the current ten percent level to for example, 20% or 50%.

Second, the proposed instruction would specifically permit registrants to refer generically to selling security holders of control securities in the reoffer prospectus, provided that the names of those intending to resell were not known at the time of filing the Form S–8 registration statement. Later, as the names become known, registrants would be required to supplement the prospectus with that information and file the supplement as required by Rule 424(b).[141] This procedure would not be available for sellers of restricted securities, since their identity should be known at the time the reoffer transaction is registered.

Third, General Instruction C would be revised to specify less burdensome procedures for reoffers by employees of foreign private issuers filing on Form 20–F. Current General Instruction E specifies that resales by employees of

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[129] *See* Section III.C, *supra*, and proposed General Instruction G.2.

[130] Proposed Item 5.

[131] 17 CFR 229.512(i). The undertaking is proposed to be revised to indicate its applicability to Form S–8.

[132] *See* Item 601 of Regulation S–K [17 CFR 229.601]. The exhibits applicable to registration statements on Form S–8 are: Instruments defining the rights of security holders including indentures; opinion re legality; letter re unaudited interim financial information; consents of experts and counsel; power of attorney; additional exhibits; and information from reports furnished to state insurance regulatory authorities.

[133] 17 CFR 229.601(b) (4) and (29).

[134] *See* Release No. 33–6465 (April 22, 1983) [48 FR 19873]. Section 6 of the Securities Act [15 U.S.C. 77f] specifies the parties required to sign a registration statement.

[135] In addition to revising General Instruction C, an amendment is proposed to the last sentence of General Instruction B.3 on both Forms S–3 and F–3 in order to clarify that the sentence is merely a cross-reference to the reoffer procedure provided in Form S–8.

[136] Current General Instruction C(1)(b) and proposed General Instruction C.2(b) restrict each seller, and any other person with whom he or she is acting in concert, to the amount specified in Rule 144(e) [17 CFR 230.144(e)] during any three-month period.

[137] Rule 405 of Regulation C [17 CFR 230.405] defines "affiliate" as a person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified. Generally, officers and directors of the registrant are deemed affiliates of the registrant.

[138] "Restricted securities" are defined in Rule 144(a)(3) [17 CFR 230.144(a)(3)] as securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering, or securities acquired from the issuer that are subject to the resale limitations of Regulation D [17 CFR 230.501–230.506] or Rule 701(c) [17 CFR 230.701(c)] under the Securities Act, or securities that are subject to the resale limitations of Regulation D and are acquired in a transaction or chain of transactions not involving any public offering.

[139] In a number of no-action letters issued over the last several years, the staff of the Division of Corporation Finance has taken the position that securities issued to senior level executives participating in "top hat" stock option plans would not be deemed to be restricted securities. *See* letters re *Hal Roach Studios, Inc.*, available Jan. 14, 1988; *Lotus Development Corp.*, available April 6, 1987; *Chi-Chi's, Inc.*, available Jan. 22, 1987; *Electromagnetic Sciences, Inc.*, available May 16, 1986; *Synbiotics Corporation*, available Aug. 22, 1985. That position was incorrect because the securities issued in connection with those plans are sold to executives pursuant to section 4(2) [15 U.S.C. 77d(2)] under the Securities Act or Regulation D thereunder. Securities issued pursuant to those provisions are defined as "restricted securities" in Rule 144 [17 CFR 230.144]. Notwithstanding any previous position expressed by the Division in its no-action or interpretive letters, the position set forth in this release will become effective as of the date of publication in the **Federal Register** with respect to all future issuances of securities under such plans.

[140] The staff currently does not object to registration of restricted securities in an amount up to ten percent of shares issuable under all plans whose securities are registered.

[141] Currently, the Instruction states that registrants must specify the names of selling persons and file either a post-effective amendment or a Rule 424(b) prospectus to add names to the reoffer prospectus.

such issuers may be made as described in General Instruction C except that a prospectus on either Form F-2 or F-3 may be used by an issuer eligible to use the respective form. General Instruction E would be rescinded [142] and General Instruction C would be revised to substitute Form F-3 for S-3 wherever applicable. Thus, the reoffer prospectus for such an offering would comply with the requirements of Form F-3, whether or not the registrant were eligible to use that form, just as the Form S-3 prospectus is available for domestic registrants. Similarly, if the foreign private issuer were eligible to use Form F-3, reoffers could be made without the volume limits, just as for a domestic registrant meeting the registrant requirements of Form S-3.

E. Changes to Form 11-K

The Commission is proposing to revise Form 11-K, the annual report required to be filed by employee benefit plans subject to Exchange Act Section 15(d) where plan interests are separate securities registered under the Securities Act.[143] The proposed change would revise Form 11-K to eliminate the non-financial disclosure requirements, leaving only the requirement to file annual plan financial statements 90 days after the close of the plan's fiscal year. The Commission believes there is no need to require the filing of annual non-financial plan information, since updated plan information would be delivered to employees, as discussed above.

Currently, Form 11-K specifies the plan information, financial statements and exhibits that must be included in annual reports for plans that are subject to section 15(d) reporting requirements. Form S-8 requires that reports filed on Form 11-K be incorporated by reference into the registration statement.[144] Under the proposed amendments, plan annual reports, containing audited plan financial statements, would continue to be incorporated by reference into a Form S-8 filing where plan interests are being registered.[145] This requirement is being retained in order to preserve section 11 liability for this "expertized" portion of the registration statement. In adddition, under the current and proposed rules, the plan annual report must be delivered to participants upon request.[146]

Current Form 11-K requirements with respect to the contents and preparation of financial statements, as well as the fiscal years to be covered, would be retained.[147] Form 11-K, as revised, would continue to permit the incorporation by reference into a report on that form of financial statements contained in any annual report to employees covering the latest fiscal year of the plan, provided that the statements substantially meet the requirements of Form 11-K and the report to employees is filed as an exhibit. Rule 15d-21 would continue to allow the annual financial statements to be filed as part of a registrant's annual report on Form 10-K, or as an amendment thereto, instead of Form 11-K.[148] Such statements would have to be filed as part of the Form 10-K within 120 days after the end of the plan's fiscal year. Comment is requested on whether such period should be reduced to 90 days to conform to the filing requirements of Form 11-K.

In addition, comment is solicited on the need for retaining current requirements for the filing, contents and preparation of financial statements for ERISA plans. Currently, the plans filing on Form 11-K are predominantly ERISA plans, and ERISA requirements for filing plan annual reports differ from current Form 11-K requirements in two noteworthy respects. First, the filing deadlines differ in that an ERISA plan administrator must file a plan annual report with the Secretary of Labor within 210 days after the close of the plan year.[149] Second, the time periods covered differ in that the ERISA report regarding plans with 100 or more participants must contain an audited balance sheet and an audited income statement for the last plan year.[150]

F. Transition to New System

If the amendments to Form S-8 and related changes are adopted as proposed, any registration statement on Form S-8 would be subject to the new rule and form requirements after the effective date of the amendments. A registrant with an ongoing offering of securities on Form S-8 wishing to follow the new system could revise its section 10(a) prospectus format as permitted, and would be subject to new Rule 428 and the other changes.[151] No additional filing would be required unless needed to add newly required Part II information that had not previously been filed.[152] This additional information would be included in either Form 8-K, which is incorporated by reference in the registration statement, or a post-effective amendment (which would not need to repeat previously filed information).

A registrant not choosing to take advantage of the new system for an ongoing offering would nevertheless become subject to the new forms and rules when it filed its next annual report on Form 10-K after the effective date. This filing would constitute an amendment updating the registration statement as required by section 10(a)(3) of the Securities Act, and thus trigger the requirements of Rule 401(b) [153] regarding compliance with new requirements.

IV. Charts Showing Proposed Changes

The following charts highlight the proposed substantive changes to Form S-8 and the requirements to deliver information. Editorial and clarifying changes are not noted.

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[142] *See* n.93 *supra*.

[143] *See* n.42, *supra*.

[144] *See* n.49, *supra*.

[145] *See* n.68, *supra*.

[146] Current Item 512(f)(3) of Form S-K and proposed Rule 428(b)(4). As proposed, the language of the requirement would be simplified.

[147] A registrant would continue to be required to prepare an audited statement of financial condition for each of the latest two fiscal years of a plan (or such lesser period as the plan has been in existence) and an audited statement of income and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence). These statements would have to be prepared in accordance with the applicable provisions of Article 6A of Regulation S-X [17 CFR 210.6A-03—210.6A-05].

[148] Rule 15d-21 would be modified as necessary to reflect the change to Form 11-K. A $250 fee is required with the filing of a Form 11-K, but if the required disclosure is instead included as part of a report on Form 10-K, there is no separate filing fee in addition to the $250 Form 10-K filing fee. This would continue to be the case.

[149] ERISA Section 104(a)(1); 29 U.S.C. 1024(a)(1).

[150] ERISA Section 103(b)(3) (A) and (B); 29 U.S.C. 1023(b)(3) (A) and (B). The balance sheet would need to reflect beginning and end of plan year balances. The balance sheet and income statement contained in ERISA annual reports regarding plans with less than 100 participants need not be audited.

[151] *See* Rule 401(f)(2) [17 CFR 230.401(f)(2)].

[152] The proposals would add one undertaking not currently required by Item 512 of Regulation S-K: The undertaking concerning indemnification set forth in Item 512(i), to be redesignated 512(h). Many registrants now include this undertaking voluntarily rather than make the corresponding disclosure in the prospectus (current Item 18), and thus would not have to make an addditional filing to add the undertaking.

[153] 17 CFR 230.401(b).

A. Proposed Changes to Form S–8

Current Form S–8	Proposed Form S–8
Facing page	Adds legend stating that the registration statement also covers an indeterminate number of plan interests.
General Instruction A(1)—Rule as to Use of Form S–8	Deletes 90 day reporting requirement and requirement to furnish an annual report to security holders. Provides that the form may be used to register not only securities issued pursuant to an employee benefit plan, but also those issued pursuant to compensatory written contracts. Defines "employee" to include certain advisors or consultants, and also certain former employees exercising stock options or selling securities acquired on exercise of options. "Registrant" defined and used throughout form instead of "issuer."
General Instruction B—Application of Rules and Regulations	Definitions removed to General Instruction A.1.
General Instruction C—Reoffers and Resales	Restructured for clarity. Provides that previously unregistered employee benefit plan shares may be included without limit if the registrant is eligible for Form S–3 or F–3; otherwise, each seller must comply with the Rule 144(e) volume limitation. Rescinds the current provision that previously unregistered shares may be registered for resale only in an amount up to 10% of shares issuable under the plan being registered. For foreign private issuers filing on Form 20–F, substitutes Form F–3 for S–3, thereby liberalizing the treatment of such issuers set forth in current General Instruction E. Clarifies method of naming selling security holders.
General Instruction D—Filing and Effectiveness, etc	States that a registration statement becomes effective upon filing, rather than in 20 days. Removes references to pre-effective amendments. Adds reference to requests for confidential treatment under the Exchange Act for reports incorporated by reference. Removes requirement to furnish copies of amendments marked to show changes and copies of documents incorporated by reference.
General Instruction E—Foreign Registrant	Deleted. Requirements moved to Rule 428(b)(1) (delivery of annual report on Form 20–F) and General Instruction C (use of the reoffer prospectus by foreign private issuer).
* * * *	New General Instruction E—Procedure for registering additional securities relating to the same employee benefit plan.
* * * *	New General Instruction F—Refers to new Rule 416A for the registration of plan interests.
* * * *	New General Instruction G—Specifies procedures for updating (replaces current Instruction to Part II).
Part I—Information Required in the Section 10(a) Prospectus	New headnote added setting forth the overall approach.
Item 1—Forepart of Prospectus and Outside Front Cover Page	Deleted.
Item 2—Inside Front and Outside Back Cover Pages of Prospectus	Deleted, except that requirement to deliver, upon request, documents incorporated by reference (currently required by Item 502(c) of S–K through Item 2 of S–8) is moved to Rule 428(b)(3). The statement to employees that such information is available upon request is located in new Item 2 of S–8.
Item 3—Summary Information, etc.	Deleted.
Item 4—General Information Regarding the Plan	Retained as new Item 1(a), with the following exceptions: 1. Deletion of the requirement in current Item 4(a) that an exhibit be filed naming subsidiaries. 2. Deletion of requirement in current Item 4(b) to state when plan was created, the parties thereto, and the manner of its creation. 3. Deletion of current Item 4(d) (number of employees participating and eligible). 4. Deletion of second sentence of current Item 4(e) (protective provisions of ERISA not applicable to registrant). 5. Deletion of current Item 4(f) (certain risks to participants).
Item 5—Securities to be Offered and Employees Who May Participate in the Plan	Retained as new Item 1(b), with the following exceptions: 1. Deletion of second sentence of Item 5(a) (limitation on amount of securities to be offered). 2. Deletion of current Item 5(d) (maximum and minimum amounts of securities); requirement to describe terms regarding the amount of securities that can be purchased is included in new Item 1(c). 3. Addition of requirement to briefly describe securities being offered, if not capital stock (new Item 1(b)(2)).
Item 6—Purchase of Securities Pursuant to the Plan	Retained as Item 1(c), with deletion of requirement for tabular information about options (current Instructions 1–4) and addition of requirement to describe terms regarding the amount of securities that can be purchased (see discussion of current Item 5).
Item 7—Payment for Securities Offered	Retained as Item 1(d).
Item 8—Contributions Under the Plan	Retained as Item 1(e).
Item 9—Withdrawal from the Plan—Assignment of Interest	Retained as Item 1(f).
Item 10—Defaults Under the Plan	Retained as Item 1(g).
Item 11—Administration of the Plan	Retained as Item 1(h), except that certain disclosure is not required for ERISA plans.
Item 12—Investment of Funds	Retained as Item 1(i), except that: 1. Requirement to present 5-year tabular information for alternative investment media is replaced by requirement to furnish financial data that will enable employees to make informed investment decisions. 2. Certain disclosure is not required for ERISA plans. 3. Deletion of current Item 12(d) (brokers and their commissions).
Item 13—Charges and Deductions and Liens therefor.	Retained as Item 1(j).
Item 14—Description of Registrant's Securities.	Replaced by requirement to briefly describe securities, if not capital stock (new Item 1(b)(2)). Requirement to incorporate by reference description of securities (if a section 12 class) or provide a description as required by Item 202 of S–K (if not a section 12 class) moved to Part II (new Items 3(c) and 4). Ability to incorporate by reference description of securities no longer limited to capital stock.

Current Form S-8	Proposed Form S-8
Item 15—Incorporation of Certain Documents by Reference	Moved to Part II, new Item 3. Documents are incorporated by reference in the registration statement, as well as the prospectus as currently. Enumerated documents expanded to include effective registration statement on Form 10 or 20-F.
Item 16—Additional Information	Deleted; additional information about the registrant required in Exchange Act reports, as explained in new General Instruction G.
Item 17—Interests of Named Experts and Counsel	Moved to Part II, new Item 5.
Item 18—Disclosure of Commission Position on Indemnification, etc.	Replaced by requirement to include undertaking on indemnification in Part II (new Item 8; Item 512(i), redesignated as 512(h), of Regulation S-K).
Part II—Information Not Required in Prospectus	Retitled, "Information Required in the Registration Statement."
Item 19—Indemnification of Directors and Officers	Retained as Item 6.
Item 20—Exhibits	Retained as Item 7.
Item 21—Undertakings	Retained as Item 8, which specifically enumerates required undertakings.
Instruction to Part II reupdating	Deleted; replaced by new General Instruction G.
Signatures	Requirement that principal financial officer sign registration statement added to Instruction 1.

B. *Proposed Changes to Requirements to Deliver Information* (currently undertakings specified by Item 512(f) of Regulations S-K—to be mandated by proposed Rule 428(b))

Current Undertakings	Proposed Rule
512(f)(1)—Delivery of annual report to security holders	Rule 428(b)(2)—Retained, but expanded to permit delivery of other documents instead of the annual report to security holders.
512(f)(2)—Delivery of shareholder communications	Rule 428(b)(5)—Changed to require delivery only to participants who invest in registrant's securities or who so request. Deletes requirement to furnish information "in the same manner" as furnished to other shareholders.
512(f)(3)—Delivery upon request of annual report of the plan	Rule 428(b)(4)—Retained, but simplified.
512(f)(4)—Delivery of Form 20-F by foreign private issuer in lieu of annual report to security holders.	Deleted, but included in Rule 428(b)(2).
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* * * *	Rule 428(b)(3)—Delivery upon request of information incorporated by reference (currently in Item 502(c) of S-K through Item 2 of Form S-8).
	Rule 428(b)(1)—Delivery and updating of plan information and other Part I information, dated and legended to indicate that it constitutes part of the Section 10(a) prospectus. Requires revision of documents containing plan information if they become so numerous they obscure contents.

V. Cost-Benefit Analysis

To evaluate the costs and benefits associated with the proposed rule and form changes contained in this release, the Commission requests commentators to provide views and data as to the costs and benefits associated with these proposals. For the reasons set forth below, it is expected that the proposed changes to registration and reporting requirements would decrease significantly the time and expense incurred by reporting companies in registering employer securities pursuant to employee benefit plans. Furthermore, these proposals would achieve cost savings while preserving the availability of information to investors and investor protection under the federal securities laws.

The proposed amendments to Form S-8 would reduce substantially prospectus preparation, printing and distribution costs by relying on employer communications to convey material information about employee benefit plans. Elimination of requirements for filing non-financial plan information with the Commission also would reduce costs associated with the issuance of securities. The relief would extend to offerings of securities issued by both ERISA and non-ERISA plans. The proposed simplified registration form would be available to more issuers because it would no longer require that a registrant be subject to the reporting requirements of Exchange Act Section 13 or 15(d) for 90 days prior to filing a Form S-8 registration statement. Its use also would be expanded because offerings pursuant to compensatory contracts, and to consultants and advisors, could be included under specified conditions. The proposals to make Form S-8 registration statements effective upon filing, to simplify the method of calculating filing fees, and simplify the procedures for the registration of additional securities and plan interests should further alleviate costs and burdens associated with the registration process. Finally, the proposed amendment of Form 11-K to eliminate the requirement for non-financial plan information would reduce substantially the costs of complying with reporting obligations of plans that are subject to Exchange Act Section 15(d).

VI. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed amendments to Forms S-8, S-3, F-3 and 11-K, and the related new rules and rule amendments. The analysis notes that the proposed rule and form changes relating to employee benefit plans are intended to expedite the filing, effectiveness and updating of Form S-8 registration statements and to reduce Exchange Act reporting obligations.

As discussed more fully in the analysis, the proposed changes would affect persons that are small entities, as defined by the Commission's rules. It is expected that the overall effect of the proposed amendments would be to decrease significantly the impact of reporting, recordkeeping, and

compliance requirements upon registrants and plans registering securities on Form S–8. As the analysis indicates, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As more fully discussed in the analysis, implementing any of the alternatives would be either duplicative of the proposed changes or not consistent with the purposes of the Securities Act.

Comments are encouraged on any aspect of the analysis. A copy of the analysis may be obtained by contacting Larisa Dobriansky or Elizabeth Murphy, Office of Disclosure Policy, Division of Corporation Finance, at (202) 272–2589, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

VII. Request for Comments

Any interested persons wishing to submit written comments on the proposed rule and form changes to the registration and reporting requirements relating to employee benefit plans, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. Commentators are requested to address the proposed changes both from the perspective of the registrant and that of the plan participants. The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[154]

VIII. Statutory Basis of Rule and Form Proposals

New Rules 416A, 428 and 462, amendments to Rules 424, 457(h), and 475a, Item 512 of Regulation S–K, and Forms S–8, S–3 and F–3 are being proposed by the Commission pursuant to Sections 6, 7, 8, 10 and 19 of the Securities Act.[155] The amendments to Form 11–K and Rule 15d–21 are being proposed pursuant to Sections 15(d) and 23(a) of the Exchange Act.[156]

List of Subjects in 17 CFR 229, 230, 239, 240 and 249

Prospectus delivery requirements, Reporting and recordkeeping requirements, Registration requirements, Securities.

IX. Text of Rule Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for Part 229 continues to read as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78*l*(d), 78m, 78n, 78w(a), unless otherwise noted. Section 229.512 also issued under section 8, 15 U.S.C. 77f, 7, 15 U.S.C. 77g, and 8, 15 U.S.C. 77h.

2. By removing paragraph (f) of § 229.512; redesignating paragraphs (g), (h), (i) and (j) as (f), (g), (h) and (i); and revising newly redesignated paragraph (h) introductory text as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(h) *Request for acceleration of effectiveness or filing of registration statement on Form S–8.* Include the following if any acceleration is requested of the effective date of the registration statement pursuant to Rule 461 under the Securities Act (§ 230.461 of this chapter), or if the registration statement is filed on Form S–8, and:

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

The authority citation for Part 230 is amended by adding the following citations: (citations before * * * indicate general rulemaking authority).

Authority: Sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s * * * Section 230.416A also issued under sections 6, 15 U.S.C. 77f, 7, 15 U.S.C. 77g and 10, 15 U.S.C. 77j. Section 424 also issued under sections 2(10), 15 U.S.C. 77b(10) and 10, 15 U.S.C. 77j. Section 230.428 also issued under section 10, 15 U.S.C. 77j. Section 230.457(h) also issued under sections 6, 15 U.S.C. 77f, 7, 15 U.S.C. 77g, 8, 15 U.S.C. 77h, and 10, 15 U.S.C. 77j. Section 230.462 also issued under sections 6, 15 U.S.C. 77f, and 8(a), 15 U.S.C. 77h(a). Section 230.475a also issued under sections 6, 15 U.S.C. 77f, 7, 15 U.S.C. 77g, 8, 15 U.S.C. 77h, and 10, 15 U.S.C. 77j.

2. By adding new § 230.416a to read as follows:

§ 230.416a Interests to be issued pursuant to certain employee benefit plans.

Where a registration statement on Form S–8 relates to securities to be offered pursuant to an employee benefit plan, including interests in such plan that constitute separate securities required to be registered under the Act, such registration statement shall be deemed to register an indeterminate amount of such plan interests.

3. By amending paragraph (b) of § 230.424 by adding a clause after the U.S.C. cite "(15 U.S.C. 77j)," in the first sentence to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(b) * * * except for documents constituting a prospectus pursuant to Rule 428(a) (§ 230.428(a) of this chapter), * * *

* * * * *

4. By adding new § 230.428 to read as follows:

§ 230.428 Documents constituting a section 10(a) prospectus for a registration statement on Form S–8; requirements relating to offerings of securities on Form S–8.

(a)(1) Where securities are to be offered pursuant to a registration statement on Form S–8 (§ 239.16b of this chapter), the document(s) containing the employee benefit plan information required by Item 1 of that form; the statement of availability of registrant information, employee benefit plan annual reports and other information required by Item 2; and the documents containing registrant information and employee benefit plan annual reports that are incorporated by reference into the registration statement pursuant to Item 3, taken together, shall constitute a prospectus that meets the requirements of section 10(a) of the Act.

(2) The registrant shall maintain a file of the documents that, pursuant to paragraph (a) of this section, at any time are part of the section 10(a) prospectus, during the period in which offers or sales are being made and until three years after either the securities have been offered or sold or the offering has been terminated and the securities have been deregistered. Upon request, the registrant shall furnish to the

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[154] 15 U.S.C. 78w(a).

[155] 15 U.S.C. 77f, 77g, 77h, 77j and 77s.

[156] 15 U.S.C. 78o(d), 78w(a).

Commission or its staff a copy of the file containing these documents.

(b) Where securities are offered pursuant to a registration statement on Form S–8:

(1)(i) The registrant shall deliver or cause to be delivered, to each employee who is eligible to participate (or selected to participate, in the case of a stock option or other plans with selective participation) in an employee benefit plan to which the registration statement relates, the information required by Part I of Form S–8. The information shall be in written form and shall be updated in a timely manner for any material changes during any period in which offers or sales are being made. When updating information is furnished, documents previously furnished need not be re-delivered, but the registrant shall furnish promptly without charge to each employee, upon written or oral request, a copy of all documents containing the information required by Part I that then constitute part of the section 10(a) prospectus.

(ii) The registrant shall date any document constituting part of the section 10(a) prospectus and include the following printed or stamped legend on such material:

This material constitutes part of the prospectus covering these securities, which have been registered under the Securities Act of 1933.

(iii) The registrant shall revise the document(s) containing the plan information furnished to new employees pursuant to paragraph (b)(1)(i) of this section, if plan amendments become so numerous that the amendments would obscure the readability of the contents of such document(s).

(2) The registrant shall deliver or cause to be delivered with the document(s) containing the information required by Part I of Form S–8, to each employee to whom such information is sent or given, a copy of either:

(i) The registrant's annual report to security holders containing the information required by Rule 14a–3(b) (§ 240.14a–3(b) of this chapter) under the Securities Exchange Act of 1934 ("Exchange Act") for its latest fiscal year;

(ii) The registrant's annual report on Form 10–K (§ 249.310 of this chapter), U5S (§ 259.5s of this chapter), or 20–F (§ 249.220f of this chapter) for its latest fiscal year;

(iii) The latest prospectus filed pursuant to Rule 424(b) (§ 230.424(b) of this chapter) under the Act that contains audited financial statements for the registrant's latest fiscal year, provided that such prospectus contains substantially the information required by Rule 14a–3(b) or the registration statement was on Form S–18 (§ 239.28 of this chapter) or F–1 (§ 239.31 of this chapter); or

(iv) The registrant's effective Exchange Act registration statement on Form 10 (§ 249.210 of this chapter) or 20–F containing audited financial statements for the registrant's latest fiscal year. If an employee previously has received a copy of such document for the latest fiscal year, it need not be re-delivered, but in this case the registrant shall furnish promptly, without charge, a copy of such document on written or oral request of the employee. If the latest fiscal year of the registrant has ended within 120 days prior to the delivery of the documents containing the information specified by Part I of Form S–8, the document delivered may contain financial statements for the previous fiscal year, and within such 120 day period a document containing financial statements for the latest fiscal year shall be furnished to each employee.

(3) The registrant shall deliver or cause to be delivered promptly, without charge, to each employee to whom information is required to be delivered, upon written or oral request, a copy of the information that has been incorporated by reference pursuant to Item 3 of Form S–8 (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the registration statement incorporates).

(4) Where interests in a plan are registered, the registrant and plan shall deliver or cause to be delivered promptly, without charge, to each employee to whom information is required to be delivered, upon written or oral request, a copy of the then latest annual report of the plan filed pursuant to section 15(d) of the Exchange Act, whether on Form 11–K (§ 249.311 of this chapter) or included as part of the registrant's annual report on Form 10–K.

(5) The registrant shall deliver or cause to be delivered to all employees participating in a plan fund that invests in registrant securities (and other plan participants who request such information orally or in writing) who do not otherwise receive such material as security holders of the registrant, at the time such material is sent to its security holders, copies of all reports, proxy statements and other communications distributed to its security holders generally.

(c) As used in this Rule, the terms "employee" and "employee benefit plan" are defined as in General Instruction A.1 of Form S–8.

5. By revising paragraph (h) of § 230.457 to read as follows:

§ 230.457 Computation of fee.

* * * * *

(h)(1) Where securities are to be offered to employees pursuant to an employee benefit plan, the aggregate offering price and the amount of the registration fee shall be computed with respect to the maximum number of the registrant's securities issuable under the plan that are covered by the registration statement. If the offering price is not known, the fee shall be computed upon the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. In the case of an employee stock option plan, the aggregate offering price and the fee shall be computed upon the basis of the price at which the options may be exercised, or, if such price is not known, upon the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. If there is no market for the securities to be offered, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used.

(2) If the registration statement registers securities of the registrant and also registers interests in the plan constituting separate securities, no separate fee is required with respect to the plan interests.

(3) Where a registration statement includes securities to be offered to employees pursuant to an employee benefit plan and covers the resale of the same securities, no additional filing fee shall be paid with respect to the securities to be offered for resale. A filing fee shall be paid with respect to any additional securities to be offered for resale, which shall be determined in accordance with paragraph (c) of this section.

* * * * *

6. By adding new § 230.462 to read as follows:

§ 230.462 Effective date of a registration statement filed on Form S–8.

A registration statement on Form S–8 (§ 239.16b of this chapter) shall become effective upon filing with the Commission.

7. By revising the section heading and introductory phrase up to the second "j" in § 230.475a to read as follows:

§ 230.475a Certain pre-effective amendments on Forms S-3, S-4, F-2, F-3 and F-4 deemed filed with the consent of Commission.

Amendments to a registration statement on Form S-3, F-2, or F-3 (§ 239.13, § 239.32 or § 239.33 of this chapter) relating to a dividend or interest reinvestment plan; * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

2. By revising the last sentence of General Instruction I.B.3 of Form F-3 (§ 239.33) to read as follows:

Note—The text of Form F-3 is not and the amendment will not be included in the Code of Federal Regulations.

Instructions and Form

Form F-3—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

I.B.3. * * * (In addition, attention is directed to General Instruction C to Form S-8 (§ 239.16b) for the registration of employee benefit plan securities for resale.)

* * * * *

3. By revising the last sentence of General Instruction I.B.3 of Form S-3 (§ 239.13) to read as follows:

Note—The text of Form S-3 is not and the amendment will not be included in the Code of Federal Regulations.

Instructions and Form

Form S-3—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

I.B.3. * * * (In addition, attention is directed to General Instruction C to Form S-8 (§ 239.16b) for the registration of employee benefit plan securities for resale.)

* * * * *

4. By revising § 239.16b to read as follows:

§ 239.16b Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

Any registrant that, immediately prior to the time of filing a registration statement on this form, is subject to the requirement to file reports pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, and has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials), may use this form for registration under the Securities Act of 1933 (the "Act") of the following securities:

(a) Securities of such registrant to be offered pursuant to any employee benefit plan to its employees, employees of its subsidiaries or parents, or any written contract relating to the compensation of employees.

(b) Interests in the above plans, if such interests constitute securities and are required to be registered under the Act. (See Release No. 33-6188 (February 1, 1980) and Section 3(a)(2) of the Act.)

5. By revising the text of Form S-8 (§ 239.16b) to read as follows:

Note—The text of Form S-8 is not and the amendments will not be included in the Code of Federal Regulations.

Instructions and Form

Form S-8—Registration Statement Under the Securities Act of 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

(Address of Principal Executive Offices) (Zip Code)

(Full title of the plan)

(Name and address of agent for service)

(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee

(If plan interests are being registered, include the following: In addition, pursuant to Rule 416A under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan(s) described herein.)

General Instructions

A. Rule as to Use of Form S-8

1. Any registrant that, immediately prior to the time of filing a registration statement on this form, is subject to the requirement to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 ("the Exchange Act"), and has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials), may use this form for registration under the Securities Act of 1933 (the "Act") of the following securities:

(a) Securities of such registrant to be offered pursuant to any employee benefit plan to its employees or employees of its subsidiaries or parents. For purposes of this form, the term "employee benefit plan" is defined as any employee benefit plan pursuant to Rule 405 of Regulation C (§ 230.405) or any written contract relating to the compensation of employees. For purposes of this form, the term "employee" is defined as any director, trustee (where the registrant is a business trust), officer or other employee, and includes consultants or advisors who render bona fide services to the registrant or its parents or subsidiaries in connection with their business, provided that such services must not be in connection with the offer or sale of securities in a capital-raising transaction. The term "employee" also includes former employees, but only to permit registration on Form S-8 of the exercise of non-transferable employee benefit plan stock options and the subsequent sale of the securities, even if the participant is no longer employed at the time of exercise or sale, provided that such exercises are not prohibited

under the terms of the plan. The term "registrant" as used in this form means the person whose securities are to be offered pursuant to the plan.

(b) Interests in the above plans, if such interests constitute securities and are required to be registered under the Act. (See Release No. 33–6188 (February 1, 1980) and section 3(a)(2) of the Act.)

2. Where interests in a plan are being registered and the plan's latest annual report filed pursuant to section 15(d) of the Exchange Act is to be incorporated by reference pursuant to the requirements of Form S–8, the plan shall either: (i) Have been subject to the requirement to file reports pursuant to section 15(d) and shall have filed all reports required to be filed by such requirements during the preceding 12 months (or for such shorter period that the plan was required to file such reports); or (ii) if the plan has not previously been subject to the reporting requirements of section 15(d), concurrently with the filing of the registration statement on Form S–8, the plan shall file an annual report for its latest fiscal year (or if the plan has not yet completed its first fiscal year, then for a period ending not more than 90 days prior to the filing of this registration statement), provided that if the plan has not been in existence for at least 90 days prior to the filing date, the requirement to file an employee plan annual report shall not apply.

B. Application of General Rules and Regulations

1. Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C thereunder (§ 230.400 to § 230.499). That Regulation contains general requirements regarding the preparation and filing of registration statements. However, any provision in this form covering the same subject matter as any such requirement shall be controlling unless otherwise specifically provided in the sections of Regulation C (see § 230.400).

2. Attention is directed to Regulation S–K (§ 229) for the requirements applicable to the content of the non-financial portions of registration statements under the Act. Where this form directs the registrant to furnish information required by any item of Regulation S–K, information need only be furnished to the extent appropriate.

C. Reoffers and Resales

1. *Securities.* Reoffers or resales of the following securities may be made pursuant to a registration statement on this form under Rule 415 (§ 230.415) by means of a separate prospectus ("reoffer prospectus"), which is prepared in accordance with the requirements of Part I of Form S–3 (or, if the registrant is a foreign private issuer filing on Form 20–F, in accordance with Part I of Form F–3), and filed with the registration statement on Form S–8 or, in the case of control securities, a post-effective amendment thereto:

(a) *Control securities*, which are defined for purposes of this General Instruction C as securities acquired under the registration statement on Form S–8 held by affiliates of the registrant as defined in Rule 405 (§ 230.405)). Control securities may be included in a reoffer prospectus only if they have been or will be acquired by the selling security holder pursuant to an employee benefit plan that is the subject of the registration statement; or

(b) *Restricted securities*, which are defined for purposes of this General Instruction C as securities issued under any employee benefit plan of the registrant meeting the definition of "restricted securities" in Rule 144(a)(3) (§ 230.144(a)(3)). Restricted securities may be included in a reoffer prospectus only if they have been acquired by the selling security holder prior to the filing of the registration statement.

2. *Limitations.* The reoffer prospectus may be used as follows:

(a) If the registrant, at the time of filing such prospectus, satisfies the registrant requirements for use of Form S–3 (or if the registrant is a foreign private issuer filing on Form 20–F, the registrant requirements for use of Form F–3), then the above securities may be reoffered or resold without any limitations.

(b) If the registrant, at the time of filing such prospectus, does not satisfy the registrant requirements for use of Form S–3 or F–3, as appropriate, then the following limitation shall apply with respect to both control securities and restricted securities: the amount of securities proposed to be reoffered or resold by means of the reoffer prospectus, by each person, and any other person with whom he or she is acting in concert for the purpose of selling securities of the registrant, may not exceed, during any three month period, the amount specified in Rule 144(e), calculated as of the date of filing such prospectus.

3. *Selling Security Holders.*

(a) *Control Securities.* If the names of the security holders who intend to resell are not known by the registrant at the time of filing the Form S–8 registration statement, the registrant may either: (1) Refer to the selling security holders in a generic manner in the reoffer prospectus; later, as their names and the amounts of securities to be reoffered become known, the registrant must supplement the reoffer prospectus with that information; or (2) name in the reoffer prospectus all persons eligible to resell and the amounts of securities available to be resold, whether or not they have a present intent to do so; any additional persons must be added by prospectus supplement. Prospectus supplements must be filed with the Commission as required by Rule 424(b) (§ 230.424(b)). The registrant may file a reoffer prospectus covering control securities by means of a post-effective amendment to the Form S–8 registration statement rather than filing it as part of the initial registration statement.

(b) *Restricted Securities.*

(A) All persons (including non-affiliates) holding restricted securities to be reoffered or resold pursuant to a reoffer prospectus are to be named as selling shareholders in the reoffer prospectus; *provided, however,* that any non-affiliate who holds less than the lesser of 400 shares or 1% of the shares issuable under the plan to which the Form S–8 registration statement relates need not be named if the reoffer prospectus indicates that certain unnamed non-affiliates, each of whom may sell up to that amount, may use the reoffer prospectus for reoffers and resales. The reoffer prospectus must be filed with the initial registration statement that registers the securities to be reoffered and the reoffer transaction.

(B) With respect to restricted securities to be reoffered or resold, the registrant shall file as an exhibit to the registration statement a statement indicating the section of the Act or Rule of the Commission under which exemption from registration was claimed and setting forth briefly the facts relied upon to make the exemption available.

Notes to General Instruction C

1. The term "person" as used in this General Instruction C shall be the same as set forth in Rule 144(a)(2)(§ 230.144(a)(2)).

2. If the conditions of this General Instruction C are not satisfied, registration of reoffers or resales must be made by means of a separate registration statement using whichever form is applicable.

D. Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment; Number of Copies

A registration statement on this Form S–8 will become effective automatically (Rule 462, § 230.462) upon filing (Rule

456, § 230.456). In addition, post-effective amendments on this form shall become effective upon filing (Rules 464, § 230.464 and 456). Delaying amendments are not permitted in connection with any registration statement on this form (Rule 473(d), § 230.473(d)), and any attempt to interpose a delaying amendment of any kind will be ineffective. All filings made on or in connection with this form become public upon filing with the Commission. As a result, requests for confidential treatment made under either Rule 406 (§ 230.406), or Exchange Act Rule 24b–2 (§ 240.24b–2) in connection with documents incorporated by reference, must be processed with the Commission staff prior to the filing of the registration statement. The number of copies of the filings required by Rules 402 and 472 (§ 230.402, § 230.472) shall be filed with the Commission; *provided, however,* that the number of additional copies referred to in Rule 402(b) may be reduced from ten to three and the number of additional copies referred to in Rule 472(a) may be reduced from eight to three, none of which need be marked to show changes. The requirement in Rule 402(b) and Rule 472(a) to furnish copies of documents incorporated by reference is inapplicable to Form S–8.

E. Registration of Additional Securities

With respect to the registration of additional securities of the same class as other securities for which a registration statement filed on this form relating to the same employee benefit plan is effective, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. If the new registration statement covers securities being offered for resale, it shall be deemed to include the reoffer prospectus filed in connection with the earlier registration statement; *provided, however,* that a revised reoffer prospectus shall be filed, if the reoffer prospectus is substantively different from that filed in the earlier registration statement. The filing fee required by the Act and Rule 457 (§ 230.457) shall be paid with respect to the additional securities only.

F. Registration of Plan Interests

Where a registration statement on this form relates to securities to be offered pursuant to an employee stock purchase, savings, or similar plan, the registration statement shall be deemed to register an indeterminate amount of interests in such plan that are separate securities and required to be registered under the Securities Act (Rule 416A, § 230.416A).

G. Updating

Updating of information constituting the Section 10(a) prospectus pursuant to Rule 428(a) (§ 230.428(a)) during the offering of the securities shall be accomplished as follows:

(1) Plan information specified by Item 1 of Form S–8 required to be delivered to employees shall be updated by providing employees with documents describing material changes, as specified in Rule 428(b)(1) (§ 230.428(b)(1)). Such information need not be filed with the Commission.

(2) Registrant information shall be updated by the filing of Exchange Act reports, which are incorporated by reference in the registration statement and constitute part of the Section 10(a) prospectus. Any material changes in the registrant's affairs not required to be included in a specific Exchange Act report shall be reported on Form 8–K pursuant to Item 5 thereof.

(3) An employee plan annual report incorporated by reference in the registration statement from Form 11–K (or Form 10–K, as permitted by Rule 15d–21 (§ 240.15d–21)) shall be updated by the filing of a subsequent plan annual report on Form 11–K or 10–K.

Part I—Information Required in the Section 10(a) Prospectus

Note: The document(s) containing the information specified in this Part I will be furnished to employees as specified by Rule 428(b)(1) (§ 230.428(b)(1)). Such documents need not be filed with the Commission either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 (§ 230.424). These documents and the documents incorporated by reference in the registration statement pursuant to Item 3 of Part II of this form, taken together, will constitute a prospectus meeting the requirements of Section 10(a) of the Securities Act. See Rule 428(a)(1) (§ 230.428(a)(1)).

Item 1. Plan Information

The registrant shall deliver or cause to be delivered to each participant in the plan the applicable information specified in (a) through (j) below. The information may be in one or several documents, provided that it is presented in a clear, concise and understandable fashion. See Rule 421 (§ 230.421).

(a) *General Plan Information* (1) Give the title of the plan, the name of the registrant whose securities are to be offered pursuant to the plan, and the name of each company whose employees are entitled to participate in the plan. If employees of all subsidiaries and parents of the registrant are entitled to participate in the plan, a statement to that effect will suffice without naming them.

(2) State the nature and general purpose of the plan, its duration, and any provisions for its modification, earlier termination or extension.

(3) Describe briefly the tax effects that may accrue to employees as a result of participation in the plan, the tax effects, if any, upon the registrant, and whether or not the plan is qualified under Section 401(a) of the Internal Revenue Code.

Note: If the plan is not qualified under Section 401 of the Internal Revenue Code of 1954, as amended, consideration should be given to the applicability of the Investment Company Act of 1940. See Securities Act Release No. 4790 (July 12, 1965).

(4) Briefly indicate whether the plan is subject to any provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), and those provisions to which it is subject.

(b) *Securities To Be Offered and Employees Who May Participate in the Plan.* (1) State the title and total amount of securities to be offered pursuant to the plan.

(2) Describe the material characteristics of the securities to be offered except that if capital stock is offered, such description is unnecessary.

(3) Describe briefly any restrictions on resale of the securities purchased under the plan which may be imposed upon the employee purchaser.

(4) Indicate each class or group of employees who may participate in the plan, and the basis upon which the eligibility of employees to participate therein is to be determined.

(c) *Purchase of Securities Pursuant to the Plan.* State the period of time within which employees may elect to participate in the plan, the price at which the securities may be purchased or the basis upon which such price is to be determined, and any terms regarding the amount of securities that an eligible employee can purchase.

(d) *Payment for Securities Offered.* (1) State when and the manner in which employees are to pay for the securities purchased pursuant to the plan. If payment is to be made by payroll deductions or other installment payments, state the percentage of wages or salaries or other basis for computing such payments, and the time and

manner in which an employee may alter the amount of such deduction or payment.

(2) State the nature and frequency of any reports to be made to participating employees as to the amount and status of their accounts.

Instruction. If the plan is one under which credit is extended to finance the acquisition of securities and Regulation G (12 CFR 207) or T (12 CFR 220) is applicable, it should be noted whether the respective requirements of Regulation G or T have been met.

(e) *Contributions Under the Plan.* (1) If contributions are to be made under the plan by the registrant or any employer, state who is to make such contributions, when they are to be made and the nature and amount of each contribution. If such contributions are not a fixed amount, state the basis for computing contributions.

(2) State the amount each employee is required or permitted to contribute or, if not a fixed amount, the percentage of wages or salaries or other basis of computing contributions.

(f) *Withdrawal from the Plan; Assignment of Interest.* (1) Describe the terms and conditions under which a participating employee may (i) withdraw from the plan and terminate his or her interest therein, or (ii) withdraw funds or investments held for the employee's account without terminating his or her interest in the plan.

(2) State whether, and the terms and conditions upon which, the plan permits an employee to assign or hypothecate his or her interest in the plan.

(g) *Defaults Under the Plan.* Describe briefly every event of default under the plan with which a participating employee or employer may be charged and the consequences thereof, including any forfeiture or penalty that may be thereby incurred.

(h) *Administration of the Plan.* (1) Give the name and complete address of persons who administer the plan, the capacity in which they act (such as trustee or managers) and the functions that they perform. If the plan is not subject to ERISA, state the nature of any material relationship between the administrators and the employees, the registrant or its affiliates.

(2) If the plan is not subject to ERISA, describe the manner in which the administrators of the plan are selected, their term of office and the manner in which they may be removed from office.

(i) *Investment of Funds.* (1) If participating employees may direct all or any part of the assets under the plan to two or more investment media, furnish a brief description of the provisions of the plan with respect to the alternative investment media; and provide a tabular or other meaningful presentation of financial data that, in the opinion of the registrant, will enable such employees to make informed investment decisions.

(2) In the case of a plan that is not subject to ERISA, if any person other than a participating employee has discretion with respect to the investment of all or any part of the assets of the plan in one or more investment media, name such person and describe the policies followed and to be followed with respect to the type and proportion of securities or other property in which the funds of the plan may be invested.

(3) If the plan is not subject to ERISA, state whether securities are to be purchased under the plan in the open market or otherwise. If they are not to be purchased in the open market, then state from whom they are to be purchased and describe the fees, commissions or other charges paid. If the employer or any of its affiliates, or any person having a material relationship with the employer or any of its affiliates, directly or indirectly, receives any part of the aggregate purchase price (including fees, commissions or other charges), explain the basis for the compensation.

(j) *Charges and Deductions and Liens Therefor.* (1) Describe all charges and deductions (other than deductions described in paragraph (d) and taxes) that may be made against employees participating in the plan or against funds, securities or other property held under the plan and indicate who will receive, directly or indirectly, any part thereof. Such description should include charges and deductions that may be made upon the termination of an employee's interest in the plan, or upon partial withdrawals from the employee's account thereunder.

(2) State whether or not under the plan, or pursuant to any contract in connection therewith, any person has or may create a lien on any funds, securities or other property held under the plan. If so, describe fully the circumstances under which the lien was or may be created.

Item 2. Registrant Information and Employee Plan Annual Information

The registrant shall provide a written statement to employees advising them of the availability without charge, upon written or oral request, of the documents incorporated by reference in Item 3 of Part II of the registration statement, and stating that these documents are incorporated by reference into the prospectus. The statement also shall indicate the availability without charge, upon written or oral request, of other documents required to be delivered to employees pursuant to Rule 428(b) (§ 230.428(b)). The statement shall include the address (giving title or department) and telephone number to which the request is to be directed.

Part II—Information Required in the Registration Statement

Item 3. Incorporation of Certain Documents by Reference

The registrant, and where interests in the plan are being registered, the plan, shall state that the documents listed in (a) through (c) below are incorporated by reference in the registration statement; and shall state that all documents subsequently filed by it pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in the registration statement and to be part thereof from the date of filing of such documents. Copies of these documents are not required to be filed with the registration statement.

(a) The registrant's latest annual report, and where interests in the plan are being registered, the plan's latest annual report, filed pursuant to Sections 13(a) or 15(d) of the Exchange Act, or in the case of the registrant either: (1) the latest prospectus filed pursuant to Rule 424(b) under the Act that contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed, or (2) the registrant's effective registration statement on Form 10 or 20–F filed under the Exchange Act containing audited financial statements for the registrant's latest fiscal year.

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the registrant document referred to in (a) above.

(c) If the class of securities to be offered is registered under Section 12 of the Exchange Act, the description of such class of securities contained in a registration statement filed under such Act, including any amendment or report filed for the purpose of updating such description.

Item 4. Description of Securities

If the class of securities to be offered is not registered under Section 12 of the Exchange Act, furnish the information

required by Item 202 of Regulation S–K (§ 229.202).

Item 5. Interests of Named Experts and Counsel

Furnish the information required by Item 509 of Regulation S–K (§ 209.509 of this chapter).

Item 6. Indemnification of Directors and Officers

Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 7. Exhibits

Furnish the exhibits required by Item 601 Regulation S–K (§ 229.601).

Item 8. Undertakings

Furnish the undertakings required by Item 512(a), (b) and (h) of Regulation S–K (§ 229.512(a), (b) and (h)), as well as any other applicable undertakings in Item 512.

Signatures

The Registrant. Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S–8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____ on _____, 19____

(Registrant)

By (Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the date indicated.

(Signature)

(Title)

(Date)

The Plan. Pursuant to the requirements of the Securities Act of 1933, the trustees (or other persons who administer the employee benefit plan) have duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____ on the _____ day of _____ 19____

(Plan)

By (Signature and Title)

Instructions. 1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. Where interests in the plan are being registered, the registration statement shall be signed by the plan. If the signing person is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the signing person is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath the signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations: (citations before * * * indicate general rulemaking authority).

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w. * * *

2. By amending § 240.15d–21 by adding the word "and" at the end of (a)(1), removing (a)(3), and revising paragraphs (a)(2) and (b) (introductory clause before parenthetical text) to read as follows:

§ 240.15d–21 Reports for employee stock purchase, savings and similar plans.

(a) * * *

(2) Such registrant furnishes, as a part of its annual report on such form or as an amendment thereto, the financial statements required by Form 11–K with respect to the plan.

(b) If the procedure permitted by this rule is followed, the financial statements required by Form 11–K * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 249 continues to read as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, * * *

2. By revising the text of Form 11–K (§ 249.311) to read as follows:

Note—The text of Form 11–K is not and the amendments will not be included in the Code of Federal Regulations.

Instructions and Form

FORM 11–K—For Annual Reports of Employee Stock Purchase, Savings and Similar Plans Pursuant to Section 15(d) of the Securities Exchange Act of 1934

General Instructions

A. Rule as to Use of Form 11–K

This form shall be used for annual reports pursuant to section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") with respect to employee stock purchase, savings and similar plans, interests in which constitute securities registered under the Securities Act of 1933. Such a report is required to be filed even though the registrant of the securities offered to employees pursuant to the plan also files annual reports pursuant to section 13(a) or 15(d) of the Exchange Act. However, attention is directed to Rule 15d–21 (§ 240.15d–21), which provides that in certain cases the information required by this form may be furnished with respect to the plan as a part of the annual report of such registrant. Reports on this form shall be filed within 90 days after the end of the fiscal year of the plan.

B. Application of General Rules and Regulations

(a) The General Rules and Regulations under the Exchange Act contain requirements applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(b) Particular attention is directed to Regulation 12B, which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, and the filing of the report. The definitions contained in Rule 12b–2 (§ 240.12b–2) should be especially noted. See also Regulation 15D.

(c) Four complete copies of each report on this form, including exhibits and all papers and documents filed as a part thereof, shall be filed with the Commission. At least one of the copies filed shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

C. Preparation of Report

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper

meeting the requirements of Rule 12b–12 (§ 240.12b–12). The report may omit the text of Form 11–K specifying the information required provided the answers thereto are prepared in the manner specified in Rule 12b–13 (§ 240.12b–13).

D. Incorporation of Information in Report to Employees

Any financial statements contained in any plan annual report to employees covering the latest fiscal year of the plan may be incorporated by reference from such document in response to part or all of the requirements of this form, provided such financial statements substantially meet the requirements of this form and provided that such document is filed as an exhibit to this report on Form 11–K.

Form 11–K—Annual Report

Pursuant to Section 15(d) of the Securities Exchange Act of 1934
For the fiscal year ended

A. Full title of the plan and the address of the plan, if different from that of the issuer named below:

B. Name of issuer of the securities held pursuant to the plan and the address of its principal executive office:

Required Information

The following financial statements shall be furnished for the plan:

1. An audited statement of financial condition as of the end of the latest two fiscal years of the plan (or such lesser period as the plan has been in existence).

2. An audited statement of income and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence). The statements required by this Item shall be prepared in accordance with the applicable provisions of Article 6A of Regulation S–X (§ 210).

Note: A written consent of the accountant is required with respect to the plan annual financial statements which have been incorporated by reference in a registration statement on Form S–8 under the Securities Act of 1933. The consent should be filed as an exhibit to this annual report. Such consent shall be currently dated and manually signed.

Signatures

The Plan. Pursuant to the requirements of the Securities Exchange Act of 1934, the trustees (or other persons who administer the employee benefit plan) have duly caused this annual report to be signed on its behalf by the undersigned hereunto duly authorized.

Date _____

_____

(Name of Plan)

_____

(Signature)*

* Print name and title of the signing official under the signature.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–14371 Filed 6–19–89; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Revision Form S-8; File No. 270-63]

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed revisions to Form S-8, used to register securities issued pursuant to employee benefit plans under the Securities Act of 1933.

It is estimated that approximately 2,854 Form S-8 registration statements would be filed under the proposed revisions and the estimated average burden hours would be reduced to 49 burden hours per form. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0066), New Executive Office Building, Room 3208, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

June 12, 1989.

[FR Doc. 89-14445 Filed 6-19-89; 8:45 am]

BILLING CODE 8010-01-M

federal register

Tuesday
June 20, 1989

Part III

Department of Housing and Urban Development

Office of the Secretary, Federal Housing Commissioner

24 CFR Part 812 et al.

Loans for Housing for Elderly and Nonelderly Handicapped Families and Individuals; Final Rule and Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 812, 813, 885, 912 and 913

[Docket No. R-89-1418; FR-2476]

RIN 2502-AE47

Loans for Housing for the Elderly or Handicapped; Section 202; Projects for Nonelderly Handicapped Families and Individuals

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Section 202 of the Housing Act of 1959 authorizes HUD to provide direct loans for the development of projects to serve elderly or handicapped families and individuals. Section 202 was amended by section 162 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) to ensure that the section 202 program will meet the special housing and related needs of nonelderly handicapped families and individuals. The revised program authorizes a new type of project assistance payment to replace assistance payments made under section 8 of the United States Housing Act of 1937. This final rule implements the new program.

DATE: This rule is effective on August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Policy, Financial Management and Administration, Room 9106, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-3287 or 755-8135. The TDD number is 755-6781. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2502-0044, 2502-0187, 2502-0267 and 2502-0371. Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading *Other Matters.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington DC 20410 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Section 202 of the Housing Act of 1959 authorizes HUD to provide direct loans for the development of projects to serve elderly or handicapped families and individuals. In previous years, projects selected for section 202 loans also received commitments for rental assistance payments under section 8 of the United States Housing Act of 1937. To improve the direct loan program and to better serve the special housing and related needs of nonelderly handicapped families and individuals, section 162 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (1987 Act) amended section 202. Section 162 includes a new type of assistance payments to replace section 8 assistance payments made in connection with section 202 projects for handicapped families and individuals. Projects for elderly families will continue to be processed under the original section 202/8 program and will receive section 8 assistance.

On November 2, 1988 (53 FR 44288), HUD published a notice of proposed rulemaking to implement the new program. HUD received 38 comments to the proposed rule. These comments are summarized below.

Procedural Matters

Issuance of Final Rule. Several commenters warned that HUD must act immediately to issue a NOFA and obligate funds by the end of the fiscal year to avoid what they considered to be an "illegal sequestration" of Federal funds. The Department is taking every step possible to ensure the timely obligation of program funds by the close of the fiscal year.

Compliance with the Federal Advisory Committee Act. Section 202(h)(3)(A) provides that in adopting standards and procedures for allocating funds and processing loans and assistance payments for the program, HUD shall ensure adequate participation by representatives of the disability community through the provisions available under the Federal Advisory Committee Act. The proposed rule announced HUD's intention to establish and consult with an advisory committee in accordance with FACA requirements in the development of the final rule.

Commenters genreally supported HUD's formation of an Advisory Committee to assist in program development. Commenters, however, suggested that membership in the committee should include: representatives from high-cost urban areas; individuals familiar with prices under the existing cost containment guidelines; Sponsors; industry trade associations; and development team members (including consultants, architects, attorneys and contractors).

On January 24, 1989 (54 FR 3541), HUD published its notice of intent to establish an Advisory Committee under FACA. This notice provided that the membership of the committee would include members of the disability community and persons who have been involved in the provision of housing for handciapped persons. While the committee did not include all of the specific interests suggested by the commenters, HUD is confident that the experience and expert knowledge of the committee members was sufficient to ensure the development of distinct and appropriate standards and procedures for the new program and that these standards and procedures adequately reflect the differences between such housing and housing for elderly families developed under section 202.

On March 21, 1989 (54 FR 11573), HUD announced that the Advisory Committee would meet on April 7, 1989 at HUD headquarters to review the Department's rules for the new program. The review included a discussion of the public comments, a presentation by the architect of the group home design on which development cost limits will be based, and a discussion of the FY-1989 funding schedule and procedures. The meeting was open to the public. The record of the proceedings is available to the public for review and copying at the Office of the Rules Docket Clerk.

The comments and suggestions raised by the committee are discussed in the public comment section below.

Prototype Demonstration. Section 202(h)(3)(B) of the Act provides that the Secretary may, on a demonstration basis, determine the feasibility and desirability of reducing processing time and costs for housing for handicapped families and individuals by limiting project design to a small number of prototype designs. In the preamble, HUD stated that it would announce the prototype requirements in a separate

notice if it decides to pursue the demonstration, and encouraged comments addressing the demonstration.

Many commenters supported the demonstration as long as the use of such designs is voluntary. Commenters recommended various procedures for expedited processing of such projects and made suggestions regarding prototype design. HUD is continuing to examine the feasibility of developing the prototype program. If a demonstration is conducted, these comments will be considered in drafting prototype requirements.

Organization of final rule. The final rule is substantially reorganized as follows:

—The final rule organizes the provisions applicable to the section 202/8 program (currently Subparts B and D) into one Subpart B. (The current section numeration is retained to avoid confusion).

—The new programs, originally proposed as Part 885, Subpart G, is now added as Subpart C.

—Under the final rule, many of the proposed definitions are applicable only to the new handicapped program (*e.g.*, definitions for "agreement to enter into project assistance contract", "annual income", "assisted unit", "project assistance payment", "PAC", etc.). Generally, these definitions are applicable to the PAC contract and management. A related rule to add HAP contract and management regulations for the section 202/8 program is currently pending issuance as a final rule. (See proposed rule published December 9, 1987, 52 FR 46614). When that rule is issued, similar definitions will be added to Subpart B.

—Section 202/8 provisions have been revised to delete references that are solely applicable to the handicapped program. (For example, acquisition with or without moderate rehabilitation is applicable only to group homes for the non-elderly handicapped and all references to such housing have been deleted from Subpart B.

Public Comments on Regulatory Provisions

I. Policy

A. *Flexibility of approach.* Commenters argued that the proposed regulations are inconsistent with new directions in the field of mental health which emphasize: integration into the community; supportive services tailored to the individual's needs and available over the long-term and without regard to where the individual lives; and consumer choice with regard to housing and service programs. To better serve these goals, the commenters argued that HUD should: (1) Provide supports that are attached to individuals not to specific housing (*e.g.*, one commenter suggested that handicapped individuals be provided with Section 8 Certificates and Housing Vouchers); and (2) permit greater integration of handicapped individuals into the community (suggestions included lower limitations on project size, the development of small scattered site developments, and the development of projects that include units for handicapped and nonhandicapped families.)

The emphasis of the new program is primarily on the range of services provided to handicapped families, the opportunities for independent living and participation in normal activities, and access by the handicapped families to the community at large and to employment opportunities. Consistent with this emphasis, the final regulations endeavored to promote the integration of handicapped individuals into the community to the extent consistent with the statute. HUD notes that many of the proposed changes are not permissible under the section 202 program (*i.e.*, the provision of Section 8 Housing Vouchers or Certificates and the development of housing and related facilities that are intended to be occupied, in part, by nonhandicapped families).

The Advisory Committee generally supported the Department's policies on the section 202 program and recognized that the section 202 program is only one component addressing the comprehensive housing needs of handicapped people. However, the committee strongly recommended that the Department use all of its programs to provide a full spectrum of housing opportunities for this population.

B. *Purpose and policy (§ 885.1).* Proposed § 885.1(a) describes the general purpose of the section 202 program and states that section 202 projects shall provide necessary services. While the provision of meal and nutritional services is not prohibited under the program, the list of permitted services in this section did not include food services. In response to a commenter's request, meal and nutritional services have been added to the list of illustrative services.

C. *Definitions (§ 885.5)*—1. *Borrower and Sponsor.* Under the proposed rule, PHAs may not participate as Sponsor or Borrower. Two commenters supported such participation by PHAs because non-profit corporations may not have the capital, reserves and experience to meet the stringent requirements of the new program. The commenters also noted that new construction money for public housing units is virtually non-existent, and that this change would provide PHAs with an avenue for obtaining such funds.

The definitions of Sponsor and Borrower have not been amended. Every appropriations act since 1976 has limited participation in the section 202 program to nonprofit organizations. (See Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1989 (Pub. L. 100–404, approved August 19, 1988) which provides that commitments for direct loans under section 202 shall be available only to qualified nonprofit sponsors.) Should Congress decide to revise this policy of 13 years, HUD will make appropriate changes to its regulations.

One commenter argued that there is no need for a separate Borrower corporation. The final rule does not incorporate this comment. The requirement for a separate Borrower corporation was originally imposed in the section 202/8 program to permit the participation of religious organizations, consistent with the requirements of the First Amendment of the Constitution. The requirement was extended to all Sponsors in recognition of other requirements that, in practice, compelled the formation of separate Borrower. These include prohibitions against the Borrower engaging in any other business or activity or incurring any liability or obligation not related to the proposed project.

2. *Handicapped family.* The proposed rule defined handicapped family as: (1) Families of two or more persons the head of which (or his or her spouse) is handicapped; (2) the surviving member or members of such a family living in an assisted unit with the deceased member of the family at the time of his or her death; (3) a single handicapped person between the ages of 18 and 62; or (4) two or more handicapped persons living together, or one or more such persons living with another person who is determined by HUD to be essential to their care or well-being.

One commenter argued that the definition of handicapped family should be expanded to include families with children with disabilities. The proposed definition reflected the definition of elderly or handicapped family contained in section 202(d)(4). Under this statutory definition, a family would not qualify as a handicapped family because it includes children that are handicapped.

In order to ensure that single handicapped persons will be admitted to housing assisted under the new program, numerous commenters urged HUD to change references to "handicapped families" or "families" to "the handicapped" or to the "persons with handicaps". Under the proposed definition, a single handicapped person would qualify as a handicapped family. The definition has not been changed. However, since the title of the new subpart for the program may be misleading to single handicapped individuals, it has been retitled.

Additionally, the final definition of handicapped family has been revised to provide that single handicapped individuals must be over 18 years old. (The proposed rule required that such individuals be between 18 and 62 years of age.)

3. *Handicapped person or individual.* HUD adopted the definition of handicapped person or individual contained in section 202. Several commenters urged HUD to adopt the definition of handicapped person contained in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The commenters argued: (1) The section 504 definition would help the Department to avoid the overly narrow admission criteria applied in the section 202/8 program (*e.g.*, the exclusion of mentally handicapped and developmentally disabled persons from elderly section 202 projects); (2) nothing in section 202 requires the definition of developmentally disabled person to exclude others with disabilities; and (3) the use of the section 504 definition would ensure a consistency of approach among the various agencies.

HUD's regulation implementing section 504 prohibits discrimination against qualified individuals with handicaps. While the definition of individual with handicaps is broader than the proposed definition of handicapped person or individual, the section 504 definition of "qualified individual with handicaps" recognizes that persons with handicaps may be denied benefits, such as occupancy of a dwelling unit in a HUD-assisted housing project, on the basis of failure to meet basic requirements that govern eligibility for admission, care or service. The preamble to the section 504 regulation specifically addressed commenter's arguments objecting to the exclusion of handicapped persons from elderly housing under the section 202 program. At 53 FR 20218–19, HUD stated, "For example, in a section 202 project a person is ineligible for housing for elderly persons if the person does not meet the age requirement for admission to the program." The proposed change has not been made.

HUD has consistently denied applications for projects solely for persons who are alcoholics or drug addicts. In recognition of this policy, the proposed rule stated that alcoholism and drug addiction are not included within the definition of chronic mental illness. HUD is concerned that the language of the proposed rule could be misinterpreted to permit the exclusion of individuals otherwise qualified for admission to a project, based solely on their status as alcoholics or drug addicts. A handicapped person suffering from alcoholism or drug addiction may be excluded from a project based on behavior that would exclude any other individual, even if the behavior is related to the person's drug addiction or alcoholism (*e.g.*, the illegal sale or use of drugs).

Borrowers must make decisions on each applicant's qualifications on a case-by-case basis during the course of ordinary eligibility determinations. Because HUD believes that the language in the proposed rule might have misled some Borrowers into excluding all persons suffering from a drug addiction or from alcoholism without an examination of each individual's qualifications for the program, the language excluding alcoholism and drug addiction from the definition of chronic mental illness has been deleted. A new provision has been substituted stating that a person whose sole impairment is alcoholism or drug addiction will not be considered to be handicapped for the purposes of the section 202 program. To assure the availability of this discussion to interested persons in the future, it will be codified as an appendix to the final rule.

As a related matter, the final rule revises definitions of disabled person contained in Parts 812, 813, 912 and 913 to reflect changes made by section 170(c) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988). The 1987 Act amended section 3(b)(3)(A) of the United States Housing Act of 1937, which defined person under a disability. The 1987 Act deleted the reference to disabilities as defined in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, and substituted references to developmental disabilities as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act.

4. *Housing and related facilities.* Existing section 202 regulations define housing and related facilities as rental or cooperative housing structures. One commenter asked whether the acquisition of newly constructed or rehabilitated condominium buildings would be permitted under the program. Another commenter was concerned that the proposed rule would prohibit the development of projects on scattered sites.

Recently constructed condominium or cooperative buildings will not be approved for acquisition (with or without moderate rehabilitation) under this program. Facilities for such a project must be at least three years old (see definition of housing and related facilities). Similarly, it is highly unlikely that a recently constructed condominium or cooperative building would qualify as a substantial rehabilitation project. Substantial rehabilitation of a project involves the improvement of the condition of the property from a deteriorated and substandard condition to a good condition. Relatively few newly constructed condominium or cooperative buildings should be in this condition.

HUD recognizes that the use of scattered sites (*i.e.*, small projects developed on separated sites involving a single project number) will promote the integration of handicapped individuals into the community. Nothing in the rule would preclude the development of such projects. However, the acquisition of individual units in a condominium or cooperative building as a scattered site project would not be permitted. Experience in the section 202 program has demonstrated that the provisions of governing condominium and cooperative documents (By-Laws, Articles of Incorporation, Covenants, etc.) often conflict with HUD's program requirements and the regulatory agreement. Unless a substantial percentage of the units in the condominium or cooperative are purchased, the Sponsor is powerless to effect changes to the documents or to prevent changes in these documents that would conflict with HUD's requirements.

The existing definition of "housing and related facilities" excludes all intermediate care facilities. Section 885.710(b)(4)(vii) permits the development of intermediate care facilities funded by the Health Care Financing Administration and serving the mentally retarded and persons with related conditions (ICF). Such facilities may be developed if the Sponsor demonstrates that the proposed project will primarily provide housing rather

than medical facilities, is or will be licensed by appropriate State agencies, and will receive funding from sources other than HUD for the costs of the intermediate care. The definition of "housing and related facilities" has been revised in this final rule to permit the development of such intermediate care facilities.

5. *Acquisition with or without moderate rehabilitation.* Under the existing definition of acquisition with or without moderate rehabilitation, the cost of moderate rehabilitation included within development cost may not exceed the higher of 15 percent of the loan amount or $3,000 per unit. Since group homes are considered to be a single unit under this rule, the $3,000 per unit restriction has been eliminated in the final rule.

II. Application Procedures and Program Requirements

A. *Allocation of authority (§ 885.702).* The proposed rule for the section 202 handicapped program did not require a specific allocation to nonmetropolitan areas. By contrast, 20 to 25 percent of available funds must be allocated to nonmetropolitan areas under the section 202/8 program.

Numerous commenters supported the elimination of the nonmetropolitan area allocation. Several others argued that the final rule should reflect the section 202/8 allocation requirements. These commenters argued that the preamble incorrectly implied that only large metropolitan areas offer adequate services for the disabled. Commenters suggested that if the need in nonmetropolitan areas within an allocation area is insufficient (as demonstrated by no or few applications), the regional office could reallocate unused funds to metropolitan areas.

Contrary to the allegation contained in the comments, the Department did not base its decision on any perceived inadequacy of services within nonmetropolitan areas. Rather, HUD found that the emphasis of the program is primarily on the range of services to be provided to handicapped families, the opportunities for independent living and participation in normal activities, and access by handicapped families to the community at large and to employment activities. The Department determined that it is in the best interest of the program to fund the highest ranked applications serving these goals without regard to the location of the project in a nonmetropolitan or metropolitan area. The final rule does not preclude nonmetropolitan areas from participation in the program. Moreover, if the applications from such nonmetropolitan areas receive high ranking, it is possible for projects in nonmetropolitan areas to receive awards totaling more than 25 percent of the allocated funds.

Under the proposed rule, the allocation of loan authority to allocation areas would be based on a formula that weighs the relative needs of the area as reflected in available Census data. Because Census data is updated every ten years, one commenter urged HUD to consider more current statistics. While HUD would prefer to use updated data in the allocation of funds, there is no reliable nationwide source of population data available for such an update. The final rule continues to provide for the allocation of loan authority based on available Census data.

One commenter observed that the amount of funding to be provided is not addressed in the proposed rule and that the program will assist the development of housing only if there is sufficient funding. As provided in § 885.705, HUD will make an annual announcement of funds availability in the **Federal Register** based on the annual appropriations made by Congress.

B. *Application contents (§ 885.710).* The commenters raised the following issues regarding the application content requirements.

1. *Narrative description.* Under proposed § 885.710(b)(4), the Sponsor is required to submit a narrative description of the project including:

—A description of the development method to be used (§ 885.710(b)(4)(ii));

A description of the number and type of structures, the number of stories, and the number of units by size (independent living complexes) or the number of bedrooms (group home) (§ 885.710(b)(4)(iii), (iv), and (v));

A demonstration of compliance with cost containment and modest design requirements (§ 885.710(b)(4)(vi));

A demonstration that proposed ICF facilities for the mentally retarded and persons with related conditions will primarily provide housing rather than medical facilities, will be licensed by appropriate State agencies, and will receive funding from sources other than HUD for the cost of intermediate care (§ 885.710(b)(4)(vii)).

Commenters stated that responses to these requirements will depend on the site and design of the project. Since site and design information is not required until fund reservation, commenters argued that the submission of this information at the application stage would be meaningless. Commenters urged HUD to defer the submission of this information and to permit the Sponsor to certify that it is aware of, and will comply with, the various program requirements.

While this information may be subject to modification once the site is selected and the project design is finalized, HUD requires approximate data at the application stage in order to determine the proper amount of the fund reservation, to ensure that the proposed project is likely to meet the proposed occupancy requirements and project requirements, and to ensure that the Sponsor is aware of all program requirements, has analyzed their effect on the planned project, and has presented a thorough, well-developed proposal. These requirements have been retained.

Commenter thought that the retention of these requirements would foreclose changes when the site is obtained and the design is finalized. For example, commenters feared that the Sponsor would be bound to use the development method identified in the application. HUD will permit Sponsors to make changes if the change will not increase the fund reservation, conflict with the program requirements, or substantially alter the proposed project concept. For example, a proposed new construction project could be changed to substantial rehabilitation or acquisition after the site is selected (since the fund reservations would be the same). On the other hand, a proposal to change from an independent living complex to a group home, or a proposal to change the project occupancy requirements would substantially alter the project concept and would not be allowed.

2. *Project occupancy requirements.* Proposed § 885.710(b)(5)(i) stated that the Sponsor must propose project occupancy requirements that limit occupancy to one or more of the following groups: the chronically mentally ill, the developmentally disabled; or the physically handicapped. The Advisory Committee supported the Department's policy of developing housing for specific disability groups.

Several commenters supported limiting tenancy in small group living arrangements to specific disability groups. These commenters, however, argued that such limitations should not apply to larger housing projects developed with section 202 funds. The commenters suggested that HUD's regulations must be clarified to state that people with disabilities are eligible to live in highrise and garden projects of more than 24 units developed for persons who are elderly and disabled. These comments address well-settled occupancy requirements for section 202/

8 projects. Changes to such requirements are beyond the scope of this rulemaking.

3. *State and local plans and policies.* Under proposed § 885.710(b)(5)(ii), the Sponsor must demonstrate that the proposal does not conflict with State or local plans and policies governing the development and operation of facilities serving handicapped individuals meeting the proposed project occupancy requirements. The purpose of the requirement was to ensure that proposed projects using State or local funds for the provision of services will not conflict with State and local funding requirements. For example, if a project will receive State funding for services in connection with a group home for the developmentally disabled, and State policies prohibit the funding of group homes serving more than four persons, HUD will reject a group home application proposing to serve a greater number of residents. If no State and local service funding will be provided for the project, however, the project will not be required to adhere to State funding requirements. The final rule clarifies this requirement. The requirement is relocated in the final rule to § 885.710(b)(6) (supportive service plan description).

One commenter feared that States may use this requirement to provide a preference to certain types of projects rather than reflect the actual needs of their handicapped population. The final rule recognizes that State and local funding agencies may have certain prerequisites for the provision of service funding. The rule would not foreclose a project that conflicts with the policies of State and local funding agencies if that project will receive all service funds from other sources.

Commenters noted that State and local funding sources will be reluctant to state that the project complies with local plans and policies without a review of architectural and site plans. The commenter asserted that this requirement is more appropriate at the conditional commitment stage. The rule recognizes that at the application stage, it may be impossible to determine that a project will ultimately comply with State and local requirements. The rule merely requires a threshold demonstration that the project, as proposed in the application, does not conflict with these requirements.

One commenter suggested that HUD should require a proposed project to support the goals and objectives of the State developmental disability plan. HUD does not believe that it is appropriate for the Department to go beyond a determination that the project does not conflict with funding policies that are in effect. Our objective under the section 202 program is to provide housing to meet the specific needs of handicapped families and individuals. This objective is not necessarily linked to goals and objectives of a State policy making body such as the State developmental disabilities council which may change its goals and priorities from year-to-year.

4. *Supportive service plan description.* Proposed § 885.710(b)(6) contained requirements for a service plan description.

(a) *In general.* Several commenters objected to the supportive service plan description requirement. These commenters noted that Sponsors will not know who will reside in the project before the housing is ready for occupancy. Since services must be developed based on individual need, the commenters argued that it will be impossible for Sponsors to forecast what services must be provided. The Advisory Committee expressed similar reservations.

Initially, HUD notes that the requirements for the submission of a service plan description are similar to the requirements that were imposed on Sponsors of projects for chronically mentally ill individuals under the existing section 202/8 program. These requirements have worked well in that program and HUD intends to continue to apply them in the new program for handicapped individuals. Moreover, HUD notes that the commenters have misinterpreted the purpose of the service plan description. It is not intended to require the submission of individual plans for specific residents. Rather, the plans should describe the range of services to be provided for residents. HUD has made minor revisions to the text of the final rule to clarify this point.

Another commenter emphasized that HUD should promote the provision of flexible and ongoing support to individuals, rather than the provision of such support in connection with facilities. The commenter argued that when an individual no longer needs the intensity or types of support attached to a facility, that individual must not lose his or her home when support needs change. Under HUD's rules, the supportive services are not "attached" to the facility. A plan is required to assure that residents are not placed into a community without the necessary support to live in the setting. There is no HUD requirement that residents participate in particular services.

Instead of a plan description, a commenter would permit Sponsors to provide certain assurances for the provision of services. The provision of a service plan description containing the elements described in the proposed regulation is a statutorily imposed application requirement. The suggested certifications cannot be substituted.

(b) *Funding.* The final rule at § 885.710(b)(6)(ii) requires the Sponsor to submit evidence of funding sources for supportive services that will be provided for compensation, including State and local funds available to assist in the provision of such services, or evidence of commitment to provide the supportive services from agencies that will not be compensated. Numerous commenters supported the emphasis on the supportive service funding mechanism, provided that HUD recognizes the degree to which various States are unable to commit their funds to projects that are not in operation. The commenters suggested that HUD should not give a preference to a project located in a State that is able to make such commitments over projects in States that cannot make commitments.

HUD recognizes that public bodies generally are unable to make long-term commitments for support of services linked to a project that is not yet operational. They can, however, indicate whether funding is anticipated, given the availability of appropriations. In those States where, because of fiscal or other constraints, the State indicates that funds cannot be made available for services, the Sponsor must secure and provide documentation of other funding sources to meet the anticipated needs of residents. There is no penalty for having private, as opposed to public, funding sources.

Another commenter supported the requirement for supportive service programs, but argued that the programs must be *provided with* sufficient funds through State, Federal and local allotments to secure their success. Funds for providing the assured range of services cannot be included in the computation of the project assistance payment under the section 202 housing program (see section 202(h)(4)(B)). The extent to which other governmental funds are available to assist the provision of services is beyond HUD's jurisdiction.

One commenter argued that the regulations do not maximize and enhance State initiatives for the development of housing for persons with special needs. The commenter argued that States should be able to use section 202 funds in combination with other State capital funds to develop a variety of integrated housing options. Under the

current statutory authority, section 202 funds can be used only for direct loans to nonprofit Sponsors. States can and do use capital funds to develop complementary types of housing to ensure that handicapped citizens have a variety of housing options to meet varying housing needs.

(c) *Review.* Several commenters asked how HUD, an agency whose primary responsibility is financing housing rather than service delivery, is qualified to evaluate the service plan description. Commenters suggested that HUD involve the disability community in the process. Other commenters argued that decisions regarding the necessity of services must be left to the Borrower. Another urged HUD to develop guidelines and evaluation criteria for the service plan description.

HUD will determine if the supportive service plan description is directed to the needs of the individuals with the type of disability the project proposes to serve and demonstrates that the Sponsor is able to provide or assure the provision of the proposed services. HUD intends to evaluate the service plan for the appropriateness of services in relation to the objectives of the section 202 program, the quality of the management plan for providing or coordinating the provision of supportive services including the capability and commitment of the service provider, and the strength of the funding sources for the supportive services that will be provided for compensation. HUD will supplement its own experience in the evaluation of supportive services by including the appropriate State agency with regard to the proposed project occupancy group in the review of the application for fund reservation. The State agency's comments will be considered in the preparation of HUD's analysis of the service plan description.

5. *Effective demand.* Proposed § 885.710(b)(7) required the Sponsor to provide evidence that there is an unmet need for the proposed housing in the area to be served by the project and that this need is likely to continue throughout the term of the project. This provision has been revised for clarity in the final rule to require evidence of an effective demand for the proposed housing.

A commenter noted that section 202 development has created a surplus of units in some areas. The commenter suggested that the final rule require the Sponsor to coordinate its application with the local PHA. Under the commenter's proposal, any current PHA unit availability or vacancy rates less than 95 percent in elderly or handicapped apartments would be reasons for disapproval of the application.

Public housing units in the area to be served by the project represent only a portion of the supply of housing units for handicapped individuals. Since PHAs' past participation in the provision of handicapped housing has been limited and because the current availability of PHA housing for the elderly may not be relevant to the demand for handicapped housing, HUD has not included a requirement for PHA participation in the application process. HUD will continue to conduct its independent review of the market demand for projects by considering the availability of all units to serve the needs of the proposed occupancy group.

6. *Other applications.* The section 202/8 program limits the number of units for which a sponsor may apply. The proposed rules for housing for handicapped families did not include this limitation. Numerous commenters supported the absence of the unit limitations—if HUD assures that there will not be an over-concentration of units with one Sponsor or in one application.

Under § 885.710(b)(8), the application would include a statement whether the Sponsor or any affiliated entity is planning to submit other applications during the fiscal year. HUD will use this information and other data submitted by the Sponsor to determine whether the Sponsor has sufficient financial and management capabilities to carry its proposed projects through to completion. This will avoid an overconcentration of units in one Sponsor. The project size limitations [see § 885.720] will ensure that there will not be an overconcentration of units in one application.

7. *Sponsor abilities.* A commenter argued that proposed §§ 885.710(b) (14), (15), and (17) should be consolidated with other similar requirements.

The proposed requirements are identical to requirements currently contained in the section 202/8 program. Each of these requirements, while asking for information that is similar to other submission requirements, serves a distinct purpose, as follows:

—Proposed § 885.710(b)(14) requires a description of any other housing projects or medical facilities sponsored, owned or operated by the Sponsor. The purpose of this exhibit is to permit the assessment of the Sponsor's ability to provide housing services.

—Proposed § 885.710(b)(15) requires a description of the Sponsor's past or current involvement in any programs, or of its provision of services, other than housing, that demonstrates its management capabilities and experience, including a description of the Sponsor's experience in contracting with minority business enterprises or minority groups. This requirement addresses the Sponsor's experience in the provision of services other than housing. This provides important information to assist in the evaluation of Sponsors with no previous experience as housing providers. The final rule has been revised slightly to emphasize this point. (The commenter also claimed that this requirement duplicated information required in the service plan description. However, the service plan description merely describes the services to be provided in connection with the project, and does not address the Sponsor's ability to provide such services.)

—Proposed § 885.710(b)(17) requires the submission of a description of the Sponsor's ability and willingness to sponsor and to assist the Borrower to develop, own, manage and provide appropriate services in connection with the proposed housing. This addresses the Sponsor's commitment to assist the Borrower to carry the program through to long-term operation.

A commenter argued the description of the Sponsor's management abilities and experience in contracting for services with minority enterprises should be deferred until the conditional commitment stage. This information is necessary to determine whether the Sponsor has demonstrated its capacity and commitment to assist and carry the project through to long term operation (a technical review criterion under § 885.750(b)(1)(i)(A)); to determine the extent to which the Sponsor has demonstrated this capacity (a ranking criterion under § 885.750(c)(1)(i)); and to determine the degree to which the application supports minority enterprises (a ranking criterion under § 885.750(c)(1)(ii)). The proposed change has not been made.

Finally, a commenter suggested that HUD develop a list of specific questions under each of these requirements, rather than rely on a Sponsor-generated format. Due to the various levels of experience and commitment that Sponsors may bring to the program, HUD does not believe that the sought information can be obtained through the suggested method.

8. *Consultant's certificate.* Proposed § 885.710(b)(20) required the Sponsor to submit the housing consultant's certificate and contract if consultant services were used. This requirement has been changed to reflect current HUD practice. The final rule requires the

Sponsor to submit the housing consultant's resume and a copy of the proposed consultant's contract. A copy of the contract executed by the Borrower and an Identity of Interest and Disclosure Certification signed by the consultant will be required with the request for Borrower eligibility.

9. *Intergovernmental review.* Proposed § 885.710(b)(21) required the Sponsor to demonstrate that it has submitted copies of the application to the State single point of contact (SPOC) for intergovernmental review. Commenters suggested that HUD defer intergovernmental review until the conditional commitment stage. HUD is required to consult with the State and local officials as early in the program planning process as is reasonably feasible to explain specific plans and actions. This section is unchanged in the final rule.

The proposed rule required the submission of the application to the SPOC. A commenter noted that the cost of such a submission would be approximately $200. HUD did not intend to require Sponsors to submit the entire application package to the SPOC. Rather, Sponsors are required to submit all information required by the applicable State. Generally, the submission may be limited to a brief synopsis of the application. The final regulation has been clarified.

III. Program Requirements

A. *General.* One of the major obstacles to the development of housing for handicapped families under the section 202/8 program was the requirement that HUD conduct a detailed architectural and cost containment review of all projects. The detailed reviews often delayed the construction of housing and, in many cases, unduly limited the flexibility of the project design. To remedy this problem, the proposed rules modified the design review. Cost containment was to be achieved through the establishment of development cost limits for projects and the application of certain cost containment and modest design standards applicable to all projects. In addition to the cost containment requirements, certain specified requirements (*i.e.*, HUD's minimum property standards, accessibility requirements, group home requirements, project size limitations, and site and neighborhood standards) were imposed.

Commenters generally supported the elimination of the detailed review. However, several commenters felt that HUD's review should be more limited than that proposed. These commenters argued that some of the program requirements may be contrary to State and local requirements. The commenters urged that the architectural and cost containment review should be limited to review for compliance with minimum property standards. Commenters' specific concerns were whether HUD could dictate whether garages may be provided, how many bathrooms may be provided, and how square footage should be allocated.

HUD continues to believe that the requirements imposed in the rules are the minimum necessary to ensure that projects provide an acceptable environment for handicapped residents. To HUD's knowledge, none of the specifically imposed requirements are in conflict with State and local requirements. In most cases the specifically imposed requirements exceed State and local standards.

With regard to the commenter's specific concerns, we note that if the project falls within the established development cost limits, HUD will impose no prohibition against the provision of garages. Similarly, the square footage requirements and bathroom requirements for group homes are minimum standards which may be exceeded as long as the project falls within the established development cost limits. (These minimum standards were developed based on HUD's experiences with the development of group homes, a review of available publications addressing such matters, and a survey of group home standards established in 22 States.) While HUD will establish limitations on the number of bathrooms in units for independent living complexes as a cost containment measure, these limitations may be exceeded under certain circumstances (see § 885.725(d)).

Other commenters suggested that HUD establish abbreviated design reviews for certain types of projects (*i.e.*, projects that do not exceed 115% of the minimum square footage requirements for group homes). HUD's review requirements are intended to expedite development to the greatest extent possible and, as noted above, to impose the least intrusive design requirements. Consistent with statutory requirements that the program be designed to meet the special housing and related needs of nonelderly handicapped families, HUD does not believe that it can further truncate the procedures. The Advisory Committee urged HUD to emphasize the quality of the project design, rather than to focus solely on cost containment, and concurred in HUD's determination that design review should not be further reduced.

Specific issues regarding each of the program requirements are discussed below.

B. *Project standards (§ 885.717).* This section provided that all projects must comply with minimum property standards; established minimum group home standards; and included accessibility requirements.

1. *Minimum group home standards.* Proposed § 885.717(b) stated that each group home must provide a minimum of 290 square feet of pro rated living space for each resident, including a minimum of 80 square feet for each resident in a shared bedroom and a minimum of 100 square feet for a single occupant bedroom; at least one full bathroom for every four residents; space for recreation at indoor and outdoor locations on the project site; and sufficient storage for each resident in the bedroom and other storage space necessary for the operation of the home.

Several commenters, while supporting the group home project standards, argued that the final rule should clearly state that the group homes standards are a *minimum*, and encouraged HUD to permit local flexibility above these minimums. The proposed rule is sufficiently clear on this point. The proposed rule states, for example, that *at least* one bathroom is required for each four residents. This would not prohibit a Sponsor from providing more bathrooms, if necessary for the residents served. The minimum standards, however, assure that the Sponsor did not do so at the expense of reducing bedrooms to an unacceptable size. No revision has been made in the final rule.

The Advisory Committee was concerned that the minimum square footage requirements would not ensure that bedrooms are fully accessible to persons in wheelchairs. The committee urged HUD to impose minimum square footage requirements for bedrooms that are required to be accessible. Commenters suggested other methods to ensure accessibility. (*E.g.*, commenters suggested that this section should be revised to state that the minimum square footage requirement is exclusive of closet space.)

The proposed revisions have not been included in the final rule. Initially, HUD notes that the revisions are unnecessary in light of § 885.717(c)(1) which requires compliance with Uniform Federal Accessibility Standards (24 CFR Part 40)(Subpart A)(UFAS). Moreover, the proposed revisions would not always serve the commenter's purposes since the amount of space required to ensure wheelchair accessibility will vary with such factors as the shape of the

bedroom, the amount and location of furniture, and the number and location of closets and doors.

One commenter objected to the reference to shared bedrooms. The commenter stated that the regulations must *ensure* that each resident in group homes has a private bedroom and is afforded a minimum amount of privacy. In some programs, double occupancy in bedrooms is considered to be a benefit. In other projects, private bedrooms may promote a program goal. HUD does not choose to limit Sponsor flexibility in this matter. The reference to shared bedrooms has not been eliminated from the regulation.

2. *Accessibility requirements (§ 885.717(c)).*—(a) *Compliance with Federal requirements.* The proposed rule required compliance with UFAS and section 504 regulations (24 CFR Part 8). One commenter recommended that the final rule should require all units to be fully accessible to ensure compliance with section 504 and the Fair Housing Amendments Act of 1988. The final rule has been revised to refer to HUD's regulations implementing section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (section 504), as well as the Fair Housing Act (42 U.S.C. 3601–3619).

For new federally assisted housing, unless HUD prescribes a higher percentage, section 504 requires that at least five percent of the total dwelling units or at least one unit in a multifamily housing project (defined as a project containing five or more dwelling units), whichever is greater, be made accessible for persons with mobility impairments and that an additional two percent (but not less than one unit) be accessible for persons with hearing or vision impairments (see 24 CFR 8.22). (24 CFR Part 8 was added by a final rule published June 2, 1988 (53 FR 20238).) These sections have not, as yet, been included in the bound version of the Code of Federal Regulations). Conformance with sections three through eight of UFAS (Appendix A to 24 CFR Part 40) is sufficient to make the dwelling unit accessible (see 24 CFR 8.32).

With respect to alterations to existing housing, section 504 requires that if the alterations are substantial (*i.e.*, if the cost is 75 percent or more of the replacement cost of the completed facility, and the project has 15 or more units), the requirements applicable to new housing apply. With respect to other alterations to existing housing, section 504 requires that alterations to dwelling units and common areas be made accessible to and usable by individuals with handicaps to the maximum extent feasible. Unless HUD prescribes a higher percentage, once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, no additional dwelling units are required to be made accessible (24 CFR 8.23). Finally, section 504 requires that existing housing programs be operated so that, when viewed in their entirety, they are readily accessile to and usable by individuals with handicaps (24 CFR 8.24).

The Fair Housing Act sets forth accessibility requirements which apply to all new "covered multifamily dwellings" for first occupancy after March 13, 1991. "Covered multifamily dwellings" are defined as buildings consisting of four or more dwelling units if the building has at least one elevator, and ground floor dwelling units in other buildings consisting of four or more dwelling units. (A final rule implementing the Fair Housing Act was published January 23, 1989 (54 FR 3232).) The accessibility requirements for these new covered multifamily dwellings require that public and common use areas be readily accessible to and usable by handicapped persons, that doors be sufficiently wide to allow passage into and within all premises by persons in wheelchairs, and that individual dwelling units contain four features of adaptive design (54 FR 3289–90). These requirements are, in some respects, more modest than the section 504 accessibility requirements, but they apply to a greater percentage of dwelling units in covered buildings. With respect to existing units, in contrast to section 504, the Fair Housing Act does not apply to alterations. However, it does prohibit people from refusing to permit handicapped persons to make reasonable modifications to existing premises which are necessary to afford the handicapped person full enjoyment of the premises. Such modifications are made at the handicapped person's own expense.

(b) *Accessibility of dwelling units.* Proposed § 885.717(c)(3) provided that in projects for individuals with chronic mental illness, a minimum of 10 percent of all dwelling units in an independent living complex (or 10 percent of all bedrooms and bathrooms in a group home), but at least one of each such space, must be designed to be accessible or adaptable for persons with physical handicaps. Paragraph (c)(4) provided that in projects for persons with developmental disabilities or physical handicaps, all dwelling units in an independent living complex (or all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical handicaps. Commenters proposed that the standards set forth in paragraph (c)(4) should apply to all CMI projects.

These requirements reflect the fact that the accessibility needs of the chronically mentally ill population are substantially the same as those of the population at large. The proposed accessibility requirement was, therefore, based on a percentage of units. (This is the same approach used in accessibility requirements for dwelling units under section 504 and the Architectural Barriers Act of 1968.) By contrast, physically handicapped and developmentally disabled populations have greater need for increased accessibility. It is important to note that 10 percent is a minimum. In some circumstances more than 10 percent of the dwelling units must be made accessible. For example, if a project for individuals with chronic mental illness has an elevator and meets the definition of "covered multifamily dwelling," all units must satisfy the accessibility requirements contained in the Fair Housing Act. If the project does not have an elevator and meets the definitions of "covered multifamily dwelling", then the ground floor units must meet the accessibility requirements in the Fair Housing Act. The final rule is adopted as proposed.

One commenter urged HUD to clarify whether handicapped-accessible means wheelchair-accessible. The commenter noted that Sponsors serving a specialized handicapped population (*e.g.*, persons with visual or hearing impairments) have specific needs that are not necessarily related to wheelchair accessibility. The final rule has been revised to clarify that accessibility, as used in § 885.717(c) (2) through (4), means a project or dwelling unit that complies with the Uniform Federal Accessibility Standards. These standards are not limited to wheelchair accessibility, but rather specify features for people with all types of disabilities that may affect the use of their environment. Sponsors serving populations with distinct needs may provide additional special equipment or features. Such special adaptations are not appropriate for a general program standard.

The Advisory Committee expressed approval of the proposed accessibility requirements for projects serving different handicapped populations and urged the Department to develop design guidance for assuring that projects provide accessibility and usability for all disabilities as well as providing examples of different ways of achieving accessibility. HUD is considering the

provision of such guidance through administrative issuances.

(c) *Other accessibility proposals.* Commenters urged the addition of various other accessibility requirements. (*E.g.*, all dwelling units in buildings with elevators must be adaptable and at least one dwelling unit, but not less than 25 percent of the total number of dwelling units in buildings without an elevator which have dwelling units on the ground floor and which contain three or more units, shall be adaptable.) HUD believes that the accessibility requirements in UFAS, the section 504 regulations, the Fair Housing Amendments Act of 1988, and the additional adaptability and accessibility requirements contained in paragraphs (c) (2) through (4) are sufficient to ensure the development of projects that will address the needs of the handicapped populations to be served. No further revisions have been made.

A commenter argued that the final rule should state that the need for cost containment will not override accessibility requirements. The proposed rule permits only one exception to the prescribed accessibility requirements. Under paragraph (c)(4), projects for persons with developmental disabilities and physical handicaps may provide a lesser number of accessible and adaptable bedrooms and bathrooms if the project involves acquisition, the cost of providing full accessibility makes the project financially infeasible, less than one-half of the intended occupants are expected to have mobility impairments, and the project complies with the requirements of 24 CFR 8.23. HUD believes that this exception is necessary to permit the use of acquired properties. The final rule is unchanged.

C. *Project size limitations (885.720).* Proposed § 885.720 established maximum project size limitations of: 15 persons on one site (group homes); 20 persons on one site (independent living complexes for chronically mentally ill people); and 24 units per site (independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories). HUD received comments supporting higher and lower limitations.

Commenters supporting lower limitations argued that the proposed rule would encourage the development of institutions, rather than homes. The project size limitations reflect the Department's policy of encouraging the development of operationally feasible housing that ensures the integration of nonelderly handicapped individuals into the community. HUD emphasizes that the regulation sets maximum, not minimum, requirements. Thus, Sponsors are free to develop smaller projects within the regulatory constraints. For example, the Sponsor may propose a lower limitation if it believes that such a project will enhance the integration of handicapped individuals into the community or where other constraints such as State and local requirements apply.

Commenters supporting higher limits focused on the independent living complex limitations. Commenters argued that these limitations do not reflect the population and density of larger cities; do not permit the best use of limited funds; and may not permit the provision of needed housing for people with physical disabilities. Two commenters noted that this change would negatively affect those Sponsors who, based on past section 202 practices, have acquired sites that permit the development of up to 40 units.

The reduction of the independent living complex size limitation was proposed in recognition of past marketing problems associated with larger projects. Upon reconsideration and with the Advisory Committee's support, HUD has revised the final rule to recognize that there may be circumstances where larger projects should be permitted. Accordingly, HUD will, on a case-by-case basis, approve larger independent living complexes where the Sponsor demonstrates that: a greater number of units is necessary for the economic feasibility of the project; the project size is compatible with other residential development and the population density of the area in which the project is to be located; a project of the size proposed can be successfully integrated into the community; and a project of the size proposed is marketable in the community.

Under the section 202/8 program, project size limitations for independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories were stated as unit *and* household limitations. For example under the Announcement of Fund Availability for the FY–1988 section 202/8 program published April 13, 1988 (53 FR 12270), these independent living complexes were limited to 40 units per site and no more than 40 households could be served on any one site. For the purpose of this limitation, a household had the same meaning as handicapped family, except that unrelated handicapped individuals sharing a unit (other than a handicapped person living with another person who is essential to the handicapped person's well-being) were counted as separate households. Additionally to foreclose the development of independent living complexes serving large numbers of single unrelated persons, large bedroom units (*i.e.*, units with three or more bedrooms) could only be developed to serve handicapped families consisting of one or two parents with children. This final rule clarifies that these same policies will apply to independent living complexes developed for families in the developmental disability or physically handicapped occupancy categories. Consistent with the limitation on number of units, the number of households permitted on a site will be set at 24.

The proposed rule would permit HUD to impose additional project size limitations in the annual NOFA. Based on the difficulty of amending rules, several commenters recommended the deletion of the project size limitations in the rule in favor of including all project size limitations in the annual NOFA. Commenters argued that this approach would enable HUD to respond quickly to predicted trends toward smaller residences. Another commenter opposed an annual announcement. This commenter feared that Sponsors obtaining sites in advance of the NOFA and in reliance on past year's limitations would be harmed by the provision.

HUD believes that the NOFA provisions provide HUD with sufficient flexibility to respond to housing trends for handicapped individuals while providing Sponsors with consistency over the life of the program. The final rule is unchanged.

D. *Cost containment and modest design standards (§ 885.725).* The proposed cost containment and modest design standards included restrictions on amenities, limitations on unit sizes, and limitations on the cost of construction of special spaces and accommodations. Many commenters supported this section. Specifically, commenters supported: (1) The exclusion from "amenities" of durable materials to control or reduce maintenance, repair and replacement costs; (2) provisions that permit 10 percent of the construction funds to be used for special spaces and accommodations; and (3) provisions permitting the Sponsor to pay for features that exceed the cost containment and modest design features.

Upon reconsideration, HUD has modified the list of amenities to permit funding of space and mechanical hook-ups for washers and dryers in individual units in independent living complexes based on their value in assisting people

with mobility impairments to live independently. Washers or dryers, however, are included on the list of amenities that HUD will not fund. No other changes have been made to this section.

Section 885.725(c) would permit HUD to approve projects that do not comply with cost containment and modest design standards under certain circumstances. A commenter argued that HUD should also expand this provision to permit the approval of projects that do not meet the requirements of this section where exemption is necessary to comply with State and local requirements. As noted above, the minimum project standards and requirements meet or exceed all State and local standards that HUD was able to identify. Accordingly, HUD does not believe that a cost containment and modest design standard exemption should be included.

E. *Prohibited facilities (§ 885.727).* The rule prohibits commercial spaces, infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops. Other types of facilities such as cafeterias, dining rooms, community rooms, and other similar facilities are not foreclosed. One commenter argued that space for the provision of services to the residents should be permitted.

The use of facilities for the provision of supportive services is not foreclosed under the rule. For example, a community room may be occasionally used for counseling. The rule prohibits the provision of facilities that are dedicated to such uses since these facilities would be contrary to the residential nature of the housing and would create institutional surroundings.

Several commenters argued that the rule should not prohibit respite care facilities. The commenters argued that if short-term respite care is provided, the provision of permanent and more costly housing could be avoided. At a minimum, commenters argued that such space should be permitted if the Sponsor agrees to pay for the space and the additional operating costs. One commenter urged HUD to define respite care. Respite care seems to have two accepted meanings in the industry. These include: the temporary provision of accommodations and services to an individual, and the provision of services to a resident designed to prevent institutionalization of the individual (such services include nursing care, physical therapy, etc.) Under either of the accepted meanings, respite care facilities cannot be provided in association with the program. Respite care in the form of temporary housing and services is excluded because section 202 is intended to provide permanent housing for program beneficiaries (see section 202(c), which precludes the use of section 202 projects for transient or hotel purposes defined as rental for any period less than thirty days.) The provision of space for respite care for the provision of services to prevent institutionalization is prohibited for the reasons cited in the previous paragraph.

The facilities prohibitions do not specifically address living space for attendants or caregivers (*e.g.*, semi-independent apartment and cooperative family arrangements where case monitoring personnel live in one of the apartments or with mentally ill individuals). Commenters suggested that the rule should not prohibit such facilities since live-in personnel may be necessary for independent living and integration into community life. The final rule allows for the provision of such facilities, as long as other program requirements are met.

F. *Site and neighborhood standards (§ 885.730).* Proposed § 885.730 addressed site and neighborhood standards. The proposed rule provided, in part, that projects may not be located adjacent to certain facilities (schools or day care centers for handicapped persons, workshops, medical facilities or other housing primarily serving handicapped individuals) or in areas where such facilities are concentrated. Some commenters argued that this provision would undermine the Department's goal of increased housing opportunities for persons with disabilities. These commenters proposed that HUD study the impact of this provision before it is permanently applied to the program. The cited prohibition has been applied to the section 202/8 program since its inception and has been successful in discouraging the concentration of handicapped individuals in areas. HUD does not believe that further study of this prohibition is necessary.

The Advisory Committee and commenters encouraged HUD to permit waiver of this provision. In making a waiver determination, the committee urged HUD to consider the comparative advantages offered by an otherwise prohibited site over other available sites. A commenter would permit waiver where Sponsors have no other suitable site options. It is unnecessary to include a waiver provision since the prohibition, like other regulatorily imposed requirements of the section 202 program, is subject to Part 899 which permits the Secretary, upon a determination of good cause, to waive nonstatutory limitations. The Department can waive this prohibition on a case-by-case basis and may take into consideration the factors cited by the committee and by the commenter in determining if good cause exists.

This proposed section stated that projects may be located adjacent to other housing primarily serving handicapped persons if the projects together do not exceed the project size limitations of § 885.720(a). One commenter argued that the final rule should permit a group home and an independent living complex to be combined in one project. The commenter asserted that such combinations would permit provision of short-term support for clients moving to greater independence. The rule does not foreclose such innovative programs where the program objectives are served and the group home and independent living complex are included in one application. However, where such projects are proposed, the project size requirements of the independent living complex would apply to the project size as a whole, and the group home limitation would apply to the number of persons that may reside in the group home portion of the project.

The proposed rule merely cited the site and neighborhood standards contained in Parts 880 and 881. These standards have been specified in the final rule and the citation to Parts 880 and 881 has been eliminated. In addition, paragraph (c), which addresses the acceptability of new construction sites in areas of minority concentration and in racially mixed areas, is derived from existing policies, but provides greater detail on how the standards are to be applied.

G. *Prohibited relationships (§ 885.735).* Proposed § 885.735 addressed prohibited relationships including conflicts of interest. The proposed rule provides that management contracts (including associated management fees) entered into by the Borrower with the Sponsor or the Sponsor's affiliate will not constitute a conflict of interest if no more than one person salaried by the Sponsor or management affiliate is on the Borrower's board of directors. A commenter asked why officers and directors of the Sponsor may enter into management contracts with the Borrower, while officers and directors of the Borrower may not.

Initially, HUD notes that the cited provision does not permit officers or directors of the Sponsor to enter into management contracts with the Borrower. This exception is only

applicable to management contracts between the Sponsor (or the Sponsor's nonprofit affiliate) and the Borrower. As explained in the interim rule amending the section 202/8 program that was published April 10, 1986 (51 FR 12308), this exception to the general conflict of interest prohibition recognizes: (1) That one of the ranking and rating factors used by HUD to evaluate applications is the management capacity of the Sponsor; (2) that permitting Sponsors with management skills to manage section 202 projects is a longstanding HUD practice; and (3) that many Sponsors that are national organizations have salaried officers or directors. Consequently, many Sponsors have developed significant management experience. HUD believed that it would be inappropriate and contrary to the best interest of the program to bar such Sponsors from entering into management contracts.

In response to commenters, the limitation on the number of salaried employees or officers of the Sponsor that may serve on the board of a Borrower with whom the Sponsor has a management contract has been increased from one to two. Additionally, the prohibition has been clarified to state that these two members of the board must be nonvoting members. This is consistent with the policy recently adopted for the section 202/8 program.

This section also limits the housing consultant's participation in outside business ventures with other development team members. A commenter noted that this provision, when combined with HUD's low fee maximums, will make it difficult for Sponsors to find individuals to provide consultant services. To address this problem, the commenter proposed a higher fee schedule. HUD does not believe that higher maximum fees are needed in light of the number of consultants that are available to provide services to Sponsors and Borrowers under the section 202 program under the current fee schedules. In any event, consultant fees are not established by regulation and, therefore, are not addressed in this rule.

H. *Other Federal Requirements (§ 885.740)*—1. *Davis-Bacon Act.* Under proposed § 885.740(d), the Davis-Bacon wage rate requirements would apply to projects designed for dwelling use by 12 or more handicapped families. Several commenters argued that the Davis-Bacon Act wage rates exception should be extended to all projects, or to specific sizes of projects. The proposed changes are contrary to HUD's statutory authority and have not been included.

HUD does, however, believe that the applicability standard stated in the proposed rule and the statute is ambiguous and has clarified this provision in the final rule. The statute and the proposed rule stated that Davis-Bacon wage rate provisions apply to projects "designed for dwelling use by 12 or more *families*." The final rule states that these provisions will apply to independent living complexes that contain 12 or more units and that group homes are not covered. This determination is based upon the definition of elderly or handicapped families contained in section 202(d)(4) which provides, in part, that elderly or handicapped families may include two or more elderly or handicapped persons living together; and upon HUD's treatment of similar family thresholds as unit thresholds for Davis-Bacon purposes (*e.g.*, CDBG-funded rehabilitation of personal care residences). HUD notes that the threshold will be easier to administer and avoids problems associated with attempts to determine whether units are designed for more than one family.

Numerous commenters argued that the Davis-Bacon requirements should be lifted immediately for smaller section 202/8 projects that have not reached initial loan closing before the effective date of the final rule. The applicability of the Davis-Bacon wage rate provisions to section 202/8 programs will be addressed in a separate rulemaking.

2. *Relocation assistance.* When the proposed rule was published, HUD (with the Department of Transportation as the lead agency) was preparing uniform government-wide regulations for Federal and Federally assisted programs implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA), as amended by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17, approved April 2, 1987). Effective April 2, 1989, certain relocation assistance requirements apply to programs and projects that involve acquisition, rehabilitation, or demolition and receive Federal financial assistance. The proposed rule (§ 885.740(e)) stated that the URA and the government-wide implementing regulations (49 CFR Part 24) would apply to the program. The final government-wide rule was published on March 2, 1989 (54 FR 8912).

HUD does not anticipate that the development of housing for handicapped families and individuals will cause a significant amount of displacement since relocation payments will be funded by the Sponsor and not from the section 202 loan proceeds. To the extent that displacement may occur, the following relocation provisions have been included in the final rule at § 885.740(e):

—The URA and government-wide implementing regulations at 49 CFR Part 24 set forth relocation assistance requirements that apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of acquisition, rehabilitation or demolition for a project assisted under this part.

—For projects involving applications that are submitted without evidence of control of an approvable site, a displacement from the real property is covered by the URA if it occurs on or after the date that the Sponsor obtains control of an approvable site. For projects involving applications that are submitted with evidence of control of an approvable site, a displacement from the real property is covered by the URA if it occurs on or after the date that the application is submitted. Displacements occuring on or after these dates, however, may not be covered if: (i) The person has been evicted for cause based upon a serious or repeated violation of the material terms of the lease or occupancy agreement and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; (ii) The person moved into the real property after the date specified above, but received prior written notice of the expected displacement; (iii) The person is an owner-occupant and has been informed that the real property will not be acquired for the project under the threat of eminent domain; or (iv) The Sponsor (Borrower) determines that the displacement did not occur as a direct result of acquisition, rehabilitation, or demolition for the project and HUD concurs in that determination.

—If a person is displaced from the real property before the date specified above and either HUD or the Sponsor (Borrower) determines that the displacement was a direct result of acquisition, rehabilitation, or demolition, the person shall be eligible for relocation assistance as a displaced person.

—The Borrower (Sponsor) may, at any time, request a HUD determination whether a displacement will be covered by the URA and the implementing regulations.

—A displaced person's eligibility for relocation assistance is subject to the requirements in 49 CFR Part 24.

3. *Floodplains.* The proposed rule stated that all projects would be treated as critical actions requiring consideration of the 500-year floodplain for the purposes of Executive Order No. 11988, Floodplain Management. This required HUD to comply with an eight-step public notification and decision-making process to determine if sites located in a 500-year floodplain are acceptable.

A similar provision was included in a related notice announcing changes to the Supportive Housing Demonstration Program and soliciting comments on those changes (see 54 FR 736, published January 9, 1989). A commenter to that notice argued that the floodplain requirement conflicts with section 504 and the Fair Housing Act.

Upon reconsideration, HUD has amended the floodplain requirements. Under the final rule, only applications for intermediate care facilities for the mentally retarded and individuals with related conditions (see § 885.710(b)(4)(vii)) will be treated as critical actions requiring consideration of the 500-year floodplain. The residents of these projects will be the most vulnerable of the handicapped population to be served by the program. Their handicaps are of such a nature that they may require continuous active treatment programs and high staffing levels. HUD notes that projects for the elderly under the section 202/8 program are not critical actions subject to the 500-year floodplain requirements. Accordingly, HUD believes that there is a sufficient basis for a determination that intermediate care facilities are likely to contain occupants some of whom may not be sufficiently mobile to avoid loss of life or injury during flood or storm events. HUD has a proposed rule pending to provide an agency-wide floodplain regulation. When this rule is published, HUD will seek public comment on the scope of the definition of critical action.

IV. Selection of Applications and Duration of Fund Reservation

A. *Review of applications for fund reservation (§ 885.750).* HUD's review of applications for fund reservation consists of three stages: preliminary evaluation, technical review processing, and ranking.

1. *Preliminary evaluation.* Preliminary review would include a review of the receipt, timeliness and completeness of the application, the eligibility of the Sponsor and the project, and the supportive services plan. The proposed rule provided no opportunity for the submission of missing documents or to overcome defects in the original submission.

A commenter urged HUD to provide an opportunity for Sponsors to provide missing documents and to overcome minor defects in the original submission. The final rule has been revised to permit the submission of erroneously omitted documents or exhibits. Under the final rule, if an application is determined to be missing documents, the Sponsor will be advised in writing of the omissions and that additions will be be accepted if they are received on or before a specified date, generally 10 calendar days from the date of the request for additional information.

One commenter urged HUD to provide sufficient time between training sessions and application due dates to permit Sponsors to thoroughly review applications for errors. The timing of the training sessions and the application due dates are addressed in the annual NOFA. HUD's NOFAs attempt to provide Sponsors with the maximum amount of time for the preparation of applications consistent with the constraints imposed by the annual funding cycle and the need to provide sufficient time for HUD review and selection.

2. *Technical review processing.* HUD would perform a technical review of each application that is found to be acceptable under preliminary evaluation. Comments addressing specific aspects of technical review were addressed under the related application requirements above.

3. *Ranking.* HUD would assign a rating to each application that is found to be approvable under technical review and rank all applications in order of their assigned ratings within each allocation area. Rating points would be assigned based on several factors, including the Sponsor's ability to provide or facilitate the provision of the proposed supportive services to handicapped individuals meeting the proposed occupancy requirements. This ranking factor has been clarified. In the final rule, this ranking factor will include the consideration of the Sponsor's experience serving minority handicapped persons.

The ranking factors also included an assessment of the special needs (see proposed § 885.750(c)(1)(ii)). The special needs included in the proposed rule were those listed in section 213(d)(4) of the Housing and Community Development Act of 1974 that HUD believed were relevant to the program. (These included the degree to which the application supports minority enterprise, involves a small research or demonstration project, or provides an innovative housing program or alternative method of meeting lower-income housing need.) Upon review of the section 213 special needs factors, the final rule has been revised to permit HUD to consider additional special needs including the degree to which the application meets unforseeable housing needs, especially those brought on by natural disasters or special relocation requirements, and lower-income housing needs described in housing assistance plans.

Commenters addressed the following issues with regard to the ranking procedure.

(a) *Site control.* The proposed rule stated that HUD may assign additional rating points to applications with satisfactory evidence of an approvable site. The provision has been clarified in the final rule to provide that HUD may assign additional points to applications that include satisfactory evidence of control of an approvable site.

This section was supported by the Advisory Committee. One commenter, however, argued that the assignment of additional points for approvable sites would penalize projects serving persons with chronic mental illness since local zoning ordinances place fewer restrictions on the location of housing for developmentally disabled and physically handicapped persons.

In FY–1989, Congress directed HUD to fund 950 units serving deinstitutionalized homeless chronically mentally ill people. The announcement of funds availability for FY–1989 stated that approximately 40 percent of the funds available in each region would be designated for this population. Accordingly, projects proposing to serve persons with chronic mental illness will not compete against projects serving other disability groups and, thus, should not be adversely affected by this requirement during this funding cycle. The pool of applications received this year will permit HUD to determine whether it is substantially more difficult for such projects to present satisfactory evidence of an approvable site. Future decisions to award additional points to projects with approvable sites will be based, in part, on this analysis.

One commenter argued that HUD must develop a method to ensure that the site is adequate to support the intended project. As noted in the proposed rule, in order to be awarded additional points under this criterion, the Sponsor must submit the evidence described in § 885.705(a). The adequacy of this evidence is judged under the

criteria described in § 885.705 (b) and (c).

Several commenters thought that applicants providing site information should not be penalized in the ranking processs if HUD does not approve the site. HUD does not intend to penalize such applications. If the site is not approvable and the Sponsor has indicated a willingness to develop the project on a different site, the project will be rated as if no site information was submitted.

A commenter argued that HUD should require assurances that Sponsors will adhere to the proposal for which they receive extra points. It may be necessary occasionally to permit the substitution of a site following selection. This occurs from time to time in the section 202/8 program for the elderly when site control is required at the time of the application, and site and architectural design are significant rating factors. Before a substitute site will be approved, HUD will review the site to ensure that it would have received an equal or better approval rating under the criterion for the award of additional points.

(b) *Acquisition projects.* The proposed rule stated that HUD may also assign additional points for group homes using acquisition as the development method. This provision was also supported by the Advisory Committee. One commenter complained that HUD, at the ranking stage, will not have cost data demonstrating that acquisition would be more cost effective than new construction.

HUD's decision to permit the assignment of additional points for acquisition projects was not based solely on anticipated cost savings, but also upon the time savings that are generally realized in the development of such projects. The provision of additional points for such projects would, thus, further the goal of expedited development.

(c) *Number of points to be awarded.* A commenter asked how many additional points will be assigned to applications with site control. If additional points for satisfactory evidence of control of an approvable site (or for group homes using the acquisition method) are to be awarded, the announcement of funds availability will describe the maximum number of points that will be awarded under the factor. For FY–1989, HUD intends to award up to 10 points to applications with satisfactory evidence of control of an approvable site. Applications receiving points for site control and proposing to develop a group home by acquisition with or without moderate rehabilitation will receive up to five additional points.

B. *Duration of Section 202 fund reservations (§ 885.770).* This section contained provisions for extension and cancellation of the fund reservation and for appeal of HUD decisions to cancel the fund reservation. The proposed rule provided that the duration of the initial reservation is 18 months and that extensions of up to 36 months may be obtained.

One commenter argued that the duration of the fund reservation should be extended beyond the proposed 36-month period to reflect the actual experience of projects in large urban centers. In enacting section 162 of the 1987 Act, Congress found that the use of the section 202/8 program for the development of housing for nonelderly handicapped families was unnecessarily time-consuming (see section 162(a)(1)(F)). The procedures contained in the proposed rule were designed, in part, to expedite development by improving the efficiency of the process. HUD has reconsidered the proposed 36-month extension period. In light of the intent of the legislation to expedite the development of handicapped projects and the anticipated efficiency of the process under the new rules, HUD will permit extensions of 24 months, the extension period that is currently allowed under the section 202/8 program. HUD notes that projects for handicapped people developed under the more time-consuming section 202/8 procedures have reached initial loan closing in less time and that 12 months is not an unusual period. HUD believes that projects under this new program should be able to reach initial loan closing within this 24-month time period.

Some commenters asked HUD to explain what will happen if delays caused by zoning problems and other legal difficulties prevent initial closing by the extended time periods. If a Borrower is unable to complete the required actions within the time extensions provided under § 885.770(a), HUD will issue a notice of loan cancellation. If the Borrower fails to appeal the cancellation notice, or if the appeal is disapproved, the fund reservation will be cancelled. If HUD Headquarters approves the appeal, HUD will issue a written notice indicating the extended duration of the fund reservation.

C. *Transition (§ 885.775).* Under proposed § 885.775, recipients of section 202/8 fund reservations for projects for nonelderly handicapped families would be permitted to request project assistance payments under the new program if initial loan closing has not occurred. If the project is eligible for assistance under the new program and is financially infeasible with contract rents limited by section 8 FMRs (or the substitution would otherwise facilitate the development of the project in a timely manner), the request will be granted to the extent that funds are available.

Commenters generally supported the transition provision. Several commenters urged HUD to facilitate the substitution of section 202/8 projects and to expand the scope of the transition provision. (For example, commenters argued the HUD should apply the new program to *all* previously approved section 202 reservations or should permit all Sponsors with such pipeline projects to elect the new program.) Others urged HUD to seek additional authority from Congress to permit the transitions.

Under current Appropriation Act restrictions, it is not possible to convert projects with section 8 commitments to the new program without the loss of the section 8 fund reservation. Since no funds have been appropriated for assistance to previously selected projects, it is not currently possible to implement the transition provisions. Given Federal budget constraints, the Department believes that it is appropriate to utilize reserved section 8 funds as originally intended, rather than to seek new appropriations. HUD's Advisory Committee agreed with this position, but stated its strong support that HUD take further action to assure implementation of the transition provision.

Some commenters sought clarification of the transition provision. For example, commenters suggested the HUD should fully describe how funds will be made available and the procedures for review of transition applications. HUD will clarify such procedures as appropriate when funds become available for this purpose.

V. Direct Loan Processing Procedures

A. *Submission of site information (§ 885.780).* Under the proposed rule, the Sponsor is not required to submit site information until the fund reservation is issued. The fund reservation would include a deadline for the submission of this information. A commenter asked what actions HUD would take if this deadline is not met. HUD will provide appropriate extensions of the deadlines set in the notice of fund reservation. However, failure to submit the information within the described time periods may be an element in HUD's determination that the Borrower is not

making satisfactory progress toward the start of construction, rehabilitation or acquisition and may result in the cancellation of the fund reservation under § 885.770.

Upon reconsideration, HUD has made three revisions to the site information submission provision. These include:

—The Sponsor is required to provide documentary evidence of site control with the submission of site information. The proposed rule provided for the submission of site control information at the conditional commitment stage.

—HUD has revised paragraph (c)(1) to reflect the requirements of section 213(b)(1) of the Housing and Community Development Act of 1974. Under the final rule, HUD is not required to forward applications involving 12 or fewer units for local government review and comment.

—Provisions governing HUD's review of the site information are revised to state that HUD will consider the suitability of the site for its intended use.

One commenter suggested that the final rule should require HUD to supply a site appraisal when it approves the site under § 885.780(d). It is not feasible for HUD to perform a complete site appraisal before it approves the site. While the final rule provides for site appraisal at conditional commitment, HUD will endeavor to perform the site appraisal as soon as possible following the submission of site information and before the conditional commitment stage.

B. *Request for direct loan financing (§ 885.800).*—1. *Request for determination of Borrower eligibility.* Simultaneously with the request for direct loan financing, the Borrower must submit a request for determination of Borrower eligibility. Commenters addressed the following requirements.

(a) *Board certification.* Proposed § 885.800(b)(1)(i) required certain certifications from officers and directors of the Sponsor and Borrower. This section has been revised slightly for clarity.

(b) *Composition of Board.* Proposed § 885.800(b)(2)(iii)(E) stated that the Borrower's board must be composed of seven persons. A commenter argued that the size of the Board is irrelevant to HUD. Based on the paperwork burdens imposed by the appointment of each member, the commenter argued that the number should be left to State law and the Sponsor. HUD agrees. This provision has been eliminated from the final rule.

(c) *Sole purpose Borrower.* Under proposed § 885.800(b)(2)(iv), the Borrower must demonstrate that it is not authorized to engage in any other business or activity (including the operation of another rental property) or to incur any liability or obligation that is not related to the project. Numerous commenters suggested that the final rule should permit the Borrower to operate other section 202 projects.

The purpose of this provision is to give HUD sole claim to the assets of the Borrower corporation in case of default under the regulatory agreement; to ensure that the financial problems of one section 202 project will not affect the financial integrity of another; and to limit the impact of a Borrower's financial problems to one section 202 project. The final rule has been revised to clarify that the Borrower may not have engaged in any other business or activity or incurred any liability or obligation that is not related to the project, prior to the submission of the request for determination of Borrower eligibility.

(d) *Borrower eligibility.* The Borrower is required to submit a request for preliminary determination of eligibility as a mortgagor on a form prescribed by HUD (§ 885.800(b)(2)(vi)). One commenter was concerned that the form would contain additional eligibility requirements. HUD's form reflects the Borrower eligibility requirements contained in the final rule and will not impose additional eligibility requirements.

2. *Conditional commitment processing.* Under proposed § 885.800(c)(3), the Borrower would be required to submit a statement describing any proposed methods to be used in construction and rehabilitation that will promote construction efficiencies. One commenter urged the deletion of this requirement, arguing that Borrower's submissions under this provision will be recitals of the regulatory cost containment requirements. The Advisory Committee supported the retention of this requirement.

Compliance with cost containment requirements is one method of limiting project development costs and is required of every project. The purpose of this provision is to encourage Sponsors and Borrowers to identify and use other methods of limiting construction cost, such as new construction technologies. Accordingly, the provision has been retained. Since such information is relevant to the project selection process, this submission will be required in the application rather during conditional commitment processing.

3. *Firm commitment processing.* Under § 885.780(d), HUD would permit a Borrower to submit a request for firm commitment without previous conditional commitment processing under certain circumstances. The Advisory Committee supported the elimination of the two-stage commitment processing procedures for most projects. Other commenters urged the elimination of the two-stage procedure where the original application included acceptable site control information. (The commenters noted that Sponsors often have trouble extending site options and that the two-stage commitment process would unduly delay such projects.)

Many elements are reviewed during conditional commitment processing. These include: Determination of Borrower eligibility, establishment of initial contract rents, review of design, establishment of land value, review of overall project feasibility, and evaluation of the fair housing marketing plan. Accordingly, HUD does not believe that it is appropriate to allow for one-stage processing as a general rule or to permit all projects with approved sites to proceed directly to firm commitment.

The final rule has been revised, however, to permit more projects to bypass conditional commitment. One of the major obstacles to the issuance of a final commitment is the development of a project design that is acceptable to HUD on an architectural and engineering basis. The development of a project design is a time-consuming process often involving a continuing series of discussions between HUD architects and engineers and the Borrower. HUD believes that projects with designs that have been developed through this continuing design consultation can be processed on an expedited basis. Accordingly, the final rule has been revised to permit projects to proceed directly to firm commitment where HUD has issued written architectural and engineering approval of preliminary design plans and specifications. At this stage, the Borrower will have filed for a determination of eligibility, established site control and received a site appraisal, and reached an agreement with HUD staff on the preliminary drawings.

C. *Operating cost standard (§ 885.807).* Under proposed § 885.807, HUD would annually establish operating cost standards based on the average annual operating cost of comparable housing for handicapped families in each field office jurisdiction. The operating cost standard is used to determine the amount of project assistance reserved for a project under § 885.755(a)(3) and to

review the reasonableness of operating costs for the establishment of initial contract rents (§ 885.800(c)). Numerous commenters supported the elimination of the link between operating costs and FMRs, and between FMRs and rents.

1. *Costs included in the computation.* Commenters warned that it is imperative that the operating cost standard permit adequate rents and draw a clear line between project expense (operation of the facilities) and program expenses (provision of supportive services to the residents).

Under the proposed rule, operating costs were defined as administrative expenses (including salary and management expenses related to the provision of shelter), maintenance expenses, security expenses, utility expenses, taxes and insurance, and allowances for reserves. Operating costs specifically excluded expenses related to administering, or managing the provision of, supportive services. These costs will take into account all necessary and reasonable costs of operating the project. The amount of the initial contract rents plus any utility allowances will be sufficient to meet the annual reasonable and necessary operating cost of the project plus the annual debt service on the amount of the section 202 loan.

Commenters asked whether operating expenses would include costs associated with professional management consultants during rent-up, the initial year of operations and occupancy, and retraining periods when a Sponsor has a turnover of trained personnel. Administrative expenses (including salary and management expenses) are included in the computation of the operating cost standard and may include the cost of a management consultant.

Since the term "operating costs" is used elsewhere in the regulations (see § 885.975), the final rule has moved the provision defining operating costs from § 885.807(b) to the definitions section for the new program.

2. *Procedures for development of standards.* One commenter suggested that the operating cost standards should be developed with industry participation. The commenter suggested that the Advisory Committee, Sponsors, and other members of the private sector could serve as resources. HUD intends to develop the cost standards at HUD Headquarters based on information submitted by the field offices. Currently, HUD does not anticipate the participation of other entities.

D. *Amount and terms of financing (§ 885.810).*—1. *Development cost limit.* Proposed § 885.810(c) established a total development cost limit based on per unit cost limits (for independent living complexes) and provided that cost limitations would be published (for group homes). Numerous commenters supported the elimination of the link between the development cost limitations and FMRs.

(a) *Independent living complexes.* Several commenters feared that the proposed per unit cost limitations for independent living complexes would not cover development costs in some areas, particularly larger metropolitan areas. (Commenters argued that the per unit cost limits were suitable only for multifamily buildings with no special features and do not reflect the cost of building and maintaining small fireproof elevator buildings for physically handicapped residents in such areas). Commenters urged greater flexibility in order to adequately reflect disparate development costs. Suggestions included: (1) The waiver of the limitations in central city areas and other areas of high density, if the structure is designed economically and meets HUD standards; and (2) the inclusion of primary metropolitan statistical areas of two million or more (or specific areas such as New York City) as high cost adjustment areas under § 885.810(c)(3)(ii) (currently these areas include Guam, Alaska and Hawaii). One commenter urged HUD to develop independent living complex cost limits by using a methodology similar to that proposed for group homes (see discussion below). The Advisory Committee was also concerned that the unit cost limits would not be high enough to fund construction for handicapped people and urged HUD to review this issue carefully.

After consideration of these comments, HUD has retained the proposed per unit cost limits for independent living complexes. The proposed limits are based upon the same limitations prescribed under the section 202/8 program and reflect the unit limitations of section 221(d)(3) of the National Housing Act. In FR–2445—Miscellaneous Revisions to FHA Single Family and Multifamily Mortgage Insuring Authorities; Section 202 Per Unit Cost Limits published March 18, 1988 (53 FR 8874), the section 202 per unit cost limitations were increased and HUD's authority to raise the limitation in high cost areas was increased from 75 to 110 percent. In that rule, HUD determined that these limitations sufficiently took into account design features necessary to meet the needs of elderly or handicapped residents and reflect the cost of providing features as required by section 202(i)(3). Given the fact that these limitations were recently found to be sufficient to support the objective of encouraging the construction and substantial rehabilitation of multifamily residences for lower income handicapped families, HUD will not revise these limits in this rule. HUD notes that these limits have not, as yet, served as an effective mortgage restriction since the amount of most section 202/8 loans was limited by the amount of debt service that could be supported under the applicable Fair Market Rents, rather than the per unit cost limit. (Indeed, the elimination of the FMR-imposed loan limitation was one of the primary reasons for the enactment of section 162). Further, HUD believes that the economic feasibility of projects in large metropolitan areas will be improved by the provisions of this final rule which permit the development of independent living complexes that exceed the project size limitations under certain circumstances (see § 885.720(c)).

HUD intends to study the impact of these limits on development of independent living complexes under the section 202 handicapped program during the initial years of the program, particularly in light of commenters' allegations regarding higher costs in some metropolitan areas. If the limits prove to be inadequate to ensure the development of satisfactory housing under the program, HUD may make appropriate revisions and adjustments to the limits in a later rule.

(b) *Group homes.* Proposed § 885.810(c)(2) provided that HUD would periodically establish cost limits for various sizes of group homes. The cost limits would reflect those costs reasonable and necessary to develop a project of a size that will accommodate the specified number of residents, and comply with HUD's minimum property standards, the minimum square footage requirements, bathroom and recreational area requirements, cost containment and modest design standards, and other design requirements applicable to group homes. Commenters generally supported the development of the group home cost limit.

A commenter was concerned that the group home limit would reflect only the minimum requirements prescribed under the regulations (*e.g.*, the minimum square footage requirements). This was not HUD's intent. The final rule has been clarified to indicate that the cost limit will reflect those costs reasonable and necessary to develop a group home of modest design that, at a minimum, complies with the cited requirements.

Commenters suggested that HUD's calculation should include adjustments for: number of individuals that will be served; local characteristics such as State and local building code requirements; the severity of the disabilities of the handicapped population proposed to be served; and regional cost differences. HUD intends to include appropriate adjustments in the group home cost limits. The final rule has been modified for clarity.

Some commenters asked whether specific design features will be considered in the calculation of HUD's group home limits. These included live-in managers' units, staff offices and garages. The modest design currently under consideration by HUD includes a staff office and an efficiency apartment for staff, but does not include a garage. HUD notes that the modest design that it uses does not require a Borrower to provide all facilities included in the design, or preclude the provision of facilities that are not included in the design, as long as the minimum requirements of this rule are met and the costs of the project are within the group home limit.

2. *Increased mortgage limits.* Proposed § 885.810(c)(3) included provisions for increased cost limits for group homes and independent living complexes in high cost areas. The rule stated that the Assistant Secretary may increase the cost limits by up to 110 percent in any geographic areas where the cost levels require, and may increase the cost limit by up to 140 percent on a project-by-project basis. (Additional adjustments are permitted for projects in Guam, Alaska and Hawaii.)

HUD notes that the group home limitations will already be adjusted to reflect such factors as the disabilities of the handicapped population proposed to be served and State and local building codes. Accordingly, the Department does not anticipate that it will be necessary to grant increases to the cost limits for group homes on a project-by-project basis (*i.e.*, increases between 110 and 140 percent).

One commenter thought that this section did not clearly indicate whether the maximum limits under § 885.810(c)(3) were 140 percent or 240 percent of the published limits. The cited provision, which made only minor modifications to a similar provision contained in the section 202/8 regulations, adequately reflects HUD's decision to permit mortgages of up to 240 percent of the published limitation. (*E.g.*, if the applicable published limit for an independent living complex is $300,000, HUD may increase the limit to $630,000 based on the geographic area modification, and to $720,000 based on the project-by-project modification.) The text of this rule is unchanged.

Another commenter alleged that it takes approximately 60 to 90 days to process increased mortgage limit requests on a project-by-project basis under similar section 202/8 regulations. The commenter asserted that the chief cause of this delay is design review. The commenter suggested that HUD field offices should be authorized to approve up to the maximum limits without Headquarters review where a Borrower uses a design that complies with cost containment requirements.

Contary to the commenter's allegations, the duration of HUD Headquarter's review of requests is generally limited to two weeks. While HUD may later decide to delegate greater responsibility for such requests to the field offices, HUD will continue to review requests at Headquarters during the first few years of the program. The consideration of requests at HUD Headquarters will provide the most effective means of analyzing the appropriateness of the development cost limitations during the first few years of program operations.

3. *Cost savings incentives.* In the preamble, HUD stated that it was concerned that the proposed rule offered no incentive to keep costs below the maximum development cost limit. The Department suggested that the final rule may allow Borrowers to retain some portion of the savings in a development contingency account where the total development cost is less than the development cost limit. Several commenters endorsed a provision that would permit Borrowers to retain up to 50 percent of the cost savings for use for project-related expenditures or to construct additional units of housing in the project.

HUD also invited comments on awarding additional rating points to Sponsors whose prior projects were developed within the development cost limits. A commenter did not believe that it is possible to prepare development cost limitations that adequately and fairly adjust costs between geographic areas and argued that this proposal, thus, may not result in the selection of projects in communities that have the greatest need.

HUD continues to believe that cost saving incentives may have merit for the section 202 handicapped program. However, HUD is not prepared to implement an incentive at this time. In the initial years of this new program's operation, HUD intends to study the development cost limits for group homes and independent living complexes to determine if they adequately reflect development costs of such projects. As HUD gathers information concerning the adequacy of the limitations and makes appropriate revisions, HUD intends to reconsider the cost saving incentive. The Advisory Committee supported the development of such cost saving incentives.

4. *Mortgage amounts; acquisitions.* Several commenters supported the elimination of the 25 percent reduction in mortgage amounts for acquisitions and supported other provisions designed to encourage acquisition as a development method (see § 885.810(d)).

Section 885.810(d)(1) of the proposed rule stated that if a Sponsor is the fee simple owner of property unencumbered by a mortgage, the maximum loan amount may not exceed 100 percent of the proposed cost of rehabilitation. Paragraph (d)(2) stated that if the Sponsor owns property subject to an outstanding indebtedness that is to be refinanced with the section 202 loan, the maximum loan amount may not exceed the cost of rehabilitation plus the portion of the outstanding indebtedness that does not exceed the fair market value of the land and improvements before rehabilitation. One commenter argued that this section encourages Sponsors who own property in fee simple to obtain mortgages in order to circumvent the intent of the program.

When property to be rehabilitated is subject to an existing mortgage, the indebtedness is refinanced (up to the Fair Market Value) in order to bring the property under a single mortgage held by HUD. To avoid the situation cited by the commenter, the mortgage credit review of the project includes an investigation of any outstanding indebtedness recently placed against the property to ensure that it was not created in an attempt to circumvent this section.

5. *Loan interest rate.* Proposed § 885.810(f) addressed the calculation of the annual loan interest rate and the availability of an optional interest rate. The proposed rule stated that if initial loan closing did not occur within 18 months of the notice of fund reservation, HUD would cancel the election of the optional rate and use the annual loan interest rate for the loan. A commenter noted that the majority of projects do not close within 18 months of the fund reservation and, thus, it will be extremely difficult for most Borrowers to use the optional interest rate. The commenter urged HUD to eliminate the 18-month limitation.

The loan interest rate provisions incorporated in the proposed rule were

identical to those contained in the section 202/8 interim rule published on June 1, 1988 (53 FR 19899). In that interim rule, HUD noted that the existing regulations permit the cancellation of the fund reservation if it can be established that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation or acquisition; or if construction, substantial rehabilitation or acquisition is not begun within 18 months after the issuance of the initial fund reservation. (A substantially identical provision is included in this final rule at § 885.770(a).) While section 202 does not provide an expiration date for the optional interest rate, HUD concluded that it would be contrary to the goal of encouraging reasonable progress toward project operation to permit the optional rate to apply to the duration of an extended fund reservation. While HUD announced that it would continue to provide appropriate extensions of time for fund reservations, it stated that it would not permit the Borrower to receive the benefits of the optional rate during the period of the extension. The final rule here adopts this same policy.

(Note: A final rule on loan interest rate provisions for the section 202/8 program was published on November 9, 1988 (53 FR 45265). The interim rule was adopted without change.)

6. *Announcement of loan interest rate.* Under proposed § 885.810(g), the annual interest rate would be announced in the **Federal Register** and the optional interest rate would be made available at the Borrower's request. One commenter argued that HUD should automatically notify the Borrower of the current optional interest rate. HUD's current policy is to advise all Borrowers that are eligible to use the optional rate whenever the rate falls below the statutory ceiling. (The statutory ceiling is currently 9.25 percent.) HUD does not believe that it is necessary to incorporate this practice into the final regulations.

7. *Minimum capital investment.* Proposed § 885.810(h) would require Borrowers to provide a minimum capital investment of one-half of one percent of the mortgage amount committed to be disbursed, not to exceed $10,000. This amount would be placed in escrow at the initial loan closing and held for three years following initial occupancy. A commenter suggested that HUD should release unexpended minimum capital investment funds at final closing. This change would provide an incentive to Borrowers to proceed to final loan closing.

The purpose of the escrow account is to assure the Borrower's continued commitment to the development, management and operation of the project. Accordingly, HUD does not believe that it is appropriate to release unexpended minimum capital investment funds at final closing. This position was supported by the Advisory Committee.

E. *Loan disbursement procedures (§ 885.820).* Under the proposed rule, disbursements to the Borrower would be made on a periodic basis, in amounts not to exceed the HUD-approved cost of the portion of work completed and in place, minus an appropriate holdback. One commenter alleged that processing of a loan disbursement takes three and one-half weeks and that this delay is difficult for small contractors. The commenter urged HUD to revise its procedures to permit Borrowers to draw down the entire amount of the loan at initial loan closing. Payments to the contractor would be based on the percentage of completion certified by the HUD inspector.

HUD is implementing a new procedure that will permit disbursements to be made by wire transfer. This new procedure should be available within one year and is expected to reduce the processing time for loan disbursements by one-half. In light of this new procedure and to ensure that disbursements will not be made until work is completed, HUD has not made the proposed change.

F. *Completion of cost certification (§ 885.825).* Proposed § 885.825(b) addressed required cost certifications at final loan closing. In response to commenters, HUD has revised cost certification procedures to address the various responsibilities of Borrowers and construction contractors, including the availability of short-form cost certification procedures and the requirements for verification by an independent public accountant. Under the final rule:

—Where the construction contract was a cost-reimbursement contract with a ceiling price: (1) The Borrower must certify, on a form prescribed by HUD, as to the actual cost to the Borrower of the construction contract, architectural, legal, organizational, off-site costs and all other items of legitimate expense; and (2) the general contractor (and such subcontractors, material suppliers, and equipment lessors as HUD may require) must certify, on a form prescribed by HUD, as to the actual cost paid for labor, materials, and subcontract work under the general contract. The certificates must not include as actual costs any kickbacks, rebates, trade discounts, or other similar payments to the Borrower or to any of its officers, directors, or members. For projects with a mortgage of $750,000 or more, the certificates must be verified by an independent public accountant acceptable to the field office.

—Where the construction contract required the contractor to furnish all labor, materials, equipment and services required to construct and complete the project for a specified and firm fixed price, the Borrower must submit a simplified short-form cost certification on a form prescribed by HUD, and no certification is required from the contractor. For projects with a morgage of $750,000 or more, the cost certification must be verified by an independent public accountant acceptable to the field office.

One commenter argued that cost certification requirements should be tied to the amount of the construction contract, not the size of the mortgage. The purpose of the cost certification is to have verification of the total development costs of the project including all items of legitimate expense, not only the amount of the construction contract. The final rule is unchanged on this point.

Another commenter suggested various revisions that would allow qualified consulting firms to perform, and receive a fee for, the cost certification for projects with mortgages of under $750,000. The commenter would also permit payment of such a fee to the Sponsor where the Sponsor is able to perform this audit in-house. HUD will permit consulting firms to perform such cost certifications on behalf of the Borrower. However, the fee for such services must be included under the consultation agreement. HUD will not permit the consultant to collect a fee in addition to fees provided under the consultation agreement for such services. Sponsors will be prohibited from receiving such payments (see § 885.735, which addresses prohibited relationships).

G. *Additional provisions.* In addition to the comments discussed above, commenters argued that HUD should follow additional procedures to expedite the processing of applications and the development of projects. Suggested procedures included the establishment of management goals similar to those that have previously been imposed in the section 202/8 program, requirements for development conferences and

adherence to development schedules by the Borrower and the HUD staff; and HUD supervision of the builder to ensure the total compliance with plans and specifications. These suggested procedures are already followed under the section 202 program and HUD intends to continue to use them under the new program for housing for handicapped people. HUD does not believe that these procedures must be incorporated in the regulations.

VI. Project Assistance Contract

There were no comments addressing §§ 885.900 through 885.930.

VII. Project Management

A. *Responsibilities of Borrower (§ 885.940).* Proposed § 885.940 described the Borrower's marketing, management and fiscal responsibilities.

1. *Marketing responsibilities.* In response to commenters, HUD has added an additional requirement to the marketing responsibilities listed under § 885.940(a). The commenters noted that surveys have demonstrated that the number of homeless individuals with disabilities is larger than previously reported. The commenters argued that it is important to identify these individuals and provide them with permanent housing opportunities. Accordingly, the final rule requires the Borrower to provide a notice of the availability of housing to operators of temporary housing for the homeless in the same housing market.

2. *Management responsibilities.* The proposed rule provided that the Borrower is responsible for all management functions. A commenter suggested that where the Borrower wishes to self-manage, HUD should recommend a consulting arrangement for outside management expertise on a menu basis. The commenter believed that such arrangements would assist managers who lack experience in business or accounting procedures.

Subject to restrictions governing prohibited contractual relationships (see § 885.735) and HUD approval, the Borrower may contract with a private or public entity for performance of all or any part of its marketing, management and maintenance duties. While HUD will not recommend specific management agents, nothing precludes the field office from providing a list of available management agents to Borrowers upon request.

3. *User of project funds.* Under § 885.940(e), the Borrower is required to maintain a project fund account in a HUD-approved depository and to deposit all rents, charges, income and revenues arising from project operation or ownership to this account. The proposed rule stated that project funds must be used for the operation of the project, to make required principal and interest payments on the section 202 loan and to make required deposits to the replacement reserve. The final rule clarifies that payments for required insurance coverage are for the operation of the project and may be made from project funds.

The proposed rule provided that any funds remaining in the project fund account following the expiration of a fiscal year shall be deposited in the replacement reserve account under § 885.945. The final rule has been revised to conform to the practices applied in the section 202/8 program. Under the section 202/8 program, remaining funds are deposited in an interest-bearing residual receipts account. Withdrawals from this account are made for project purposes and with the approval of HUD.

B. *Selection and admission of tenants (§ 885.950).* Proposed § 885.950 governed the selection and admission of tenants.

1. *Exclusion of applicants.* To be eligible for admission to a section 202 project for handicapped families, an applicant-family must meet the definition of handicapped family, must meet project occupancy requirements as approved by HUD, and must be a lower-income family. The preamble noted that in addition to the admission requirements governing handicap and income, Borrowers would be permitted to develop and implement additional family selection criteria. As an example, the preamble stated that a Borrower could refuse to admit an otherwise eligible applicant, if the applicant is unable to live independently in the project without the support services that he or she needs, but which are not available.

Two commenters argued that this example is inconsistent with HUD's section 504 regulation. The preamble to the section 202 rule reflected the proposed rule implementing section 504 which defined qualified handicapped person, in part, with regard to the person's capacity for independent living. In the final section 504 rule published June 2, 1988 (53 FR 20216), HUD dropped references to the ability to live independently from the definition of qualified individual with handicaps. The definition was revised to focus on the capacity to comply with all obligations of occupancy either without supportive services or with supportive services provided by persons other than the recipient. Thus, Borrowers must make a determination whether the applicant can fulfill all obligations of occupancy. In a project that does not provide supportive services, it is irrelevant whether the obligations of tenancy are met by the individual alone or with assistance that the individual with handicaps arranges. Further, in making eligibility determinations, a presumption in favor of the individual's own assessment of his or her capabilities is warranted in the absence of evidence to the contrary.

A commenter suggested that HUD require Borrowers to notify local developmental disability councils when an individual with a developmental disability is excluded because of a lack of needed supportive services. While HUD agrees that such a requirement would assist the councils in identifying gaps in services and support in local communities, the proposed requirement is one which is best implemented by the developmental disability councils on a local or State basis, rather than through a Federal requirement.

2. *Income determination.* A commenter stated that it is looking forward to reviewing and commenting on a proposed rule implementing the new subsidy mechanism. The commenter specifically hoped that the new subsidy mechanism would eliminate burdensome documentation (*e.g.*, monthly forms reporting minor changes in income experienced by people who are irregularly employed or who work in sheltered or supported employment). The new subsidy mechanism is fully implemented by this final rule and further comments are not being solicited. As to the commenter's specific questions regarding income determination, current procedures allow for annualized income estimates for such situations, and establish standards for determining when interim adjustments to income calculations are required. The basic reporting forms for annual recertification that are used in other subsidized housing programs will apply to this program.

Under section 1619(b) of the Social Security Act, income that is provided as part of a plan for self-support may be excluded from a person's income for the purposes of determining SSI eligibility. Two commenters argued that HUD must exclude income covered under such an SSA plan when determining eligibility and rent. Exclusion of such income is addressed in the rule. Under the final rule, the definition of annual income refers to Part 813 calculations. Under § 813.106(c)(8)(ii), such income is excluded from the calculation.

3. Preferences. Two commenters made suggestions indicating that they believed that section 206 of the Housing and Community Development Amendments of 1979 (Pub. L. 96–153, section 206, 93

Stat. 1108 (1979)) as amended by section 203 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, section 203, 97 Stat. 1178 (1983) (preference requirements)) applies to the section 202 handicapped program. (*i.e.*, the commenters argued that HUD should specifically define substandard housing to include an individual living in inaccessible housing where he or she cannot use the bathroom or other facilities.)

On January 15, 1988, HUD published FR–1597—Preference in the Provision of Housing for Families Who Are Occupying Substandard Housing, Involuntarily Displaced, or Paying More Than 50 Percent of Family Income for Rent (53 FR 1122). This rule addressed preference requirements for most programs, including the section 8 new construction program. In a related final rule published May 4, 1988 (53 FR 15818), HUD added § 885.7. Section 885.7 stated that the preference provisions governing newly constructed section 8 projects applied to projects assisted under Part 885.

Because the section 202 program for handicapped families is not assisted under any of the statutory authorities to which the preference requirements are applicable, no preference provisions have been included under Subpart C. Because the preference requirements are applicable to projects receiving section 8 assistance, preference provisions are included for section 202/8 projects developed under Subpart B.

C. *Lease requirements (§ 885.965).* Proposed § 885.965 addressed lease requirements. Paragraph (c) would permit the Borrower to enter the leased premises without advance notice if an emergency exists or the health or safety of a family member is endangered. Numerous commenters suggested that the final rule require the Borrower to have objective evidence upon which to base the decision to enter.

The final rule has not been revised. The proposed rule required that the Borrower have reasonable cause to enter the premises. This reasonable cause requirement adequately balances the need to intercede on behalf of a person who may be endangered against the family's privacy, and ensures that Borrowers will have sufficient justification for the entry.

One commenter noted that facilities for on-site managers or supervisors are covered under the loan and should be subject to inspection along with the apartments of tenants. The lease requirements of this section address only the relationship between the Borrower and the tenant. The regulatory agreement between the Borrower and HUD will require the Borrower to maintain the mortgaged premises in good and substantial repair and condition. HUD anticipates that Borrowers will include appropriate provisions in their agreements with their managers and supervisors to assure that responsibilities with regard to the mortgaged premises are fulfilled.

D. *Adjustment of rents (§ 885.975).* Adjustments of the contract rents are provided at §§ 885.975. The proposed rule provided that HUD would compute the contract rent adjustments based on the sum of the budgeted project operating costs and debt service, with adjustments for vacancies, the project's non-rental income, and other factors. A commenter also suggested that HUD should set a ceiling on operating costs after a five-year history of the project is established.

HUD must ensure that contract rents reasonably reflect the total actual reasonable costs of developing and operating the project over the 20-year term of the project assistance contract. Accordingly, this proposal cannot be incorporated into the final rule.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule does not affect the amount of funds available under the section 202 program. Rather, the rule modifies and updates the program requirements to implement recent statutory revisions designed to ensure that the program will meet the special housing and related needs of nonelderly handicapped families. While the rule will modify the subsidy mechanism and the development procedures for the section 202 program, HUD does not believe that the economic impact on small entities will be substantial.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that the rule will likely have a significant, beneficial impact on family formation, maintenance, or well-being. The program is a benefit to families because it assists eligible handicapped families to afford decent, safe and sanitary housing and services appropriate for dealing with the specialized needs of the physically impaired, the developmentally disabled, and the chronically mentally ill.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation and does not have federalism implications. The rule provides for State and local participation in the selection of projects and provides for the imposition of State and local standards governing the development and operation of handicapped housing. While the rule encourages State and local governments to provide funds for the provision of supportive services for the handicapped in connection with section 202 housing, the rule to the maximum extent possible defers to State and local policies with regard to service funding decisions.

This rule was listed as item 962 in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708, 16730) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers is 14.157, Housing for the Elderly or Handicapped.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. The sections identified in the matrix below have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Description of information collection	Section of CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Application submission, initial loan closing (2502-0267)	885.710, 885.815	450	1	450	27	12,150.0
Request for projects exceeding size limits (2502-0267)	885.720	10	1	10	2	20
Affirmative fair housing marketing (2502-0267)	885.740(a)(6)	450	1	450	(1)	(1)
Fair housing advertising and poster (2502-0267)	885.740(a)(7)	450	1	450	(1)	(1)
Davis-Bacon labor standards (2502-0267)	885.740(d)	450	1	450	(1)	(1)
Relocation assistance (2502-0267)	885.740(e)	450	1	450	(1)	(1)
Inspection for lead-based paint hazards	885.740(f)	10	1	10	2	20
Borrower's appeal of loan cancellation (2502-0267)	885.770(b)(2)	10	1	10	(1)	(1)
Request to substitute Subpart B assistance payments for Subpart C assistance payments.	885.775	10	1	10	1	10
Site information (2502-0267)	885.780	200	1	200	(1)	(1)
Request for direct loan processing (2502-0267)	885.800	150	1	150	11.2	1680
		50	1	50	8.2	410
Request for loan disbursement (2502-0187)	885.820	200	12	2,400	.5	1,200
Cost certification (2502-0044)	885.825	200	1	200	56	11,200
Project Assistance Contract	885.900	200	1	200	5	1,000
Leasing to eligible families (2502-0371)	885.915	200	1	200	.1	20
Notice upon PAC expiration	885.930	0	(2)	0	0	0
FHEO marketing plan and requirements (2502-0371)	885.940(a)(2)	200	1	200	.75	150
List of leased and unleased units and justification (2502-0371).	885.940(a)(3)	200	12	2,400	.25	600
HUD approval of contract for services (2502-0037)	885.940(c)(1)	50	1	50	1	50
Promotion of minority and women's business enterprises (2502-0371).	885.940(c)(2)	200	1	200	1	200
Audited financial statements (2502-0371)	885.940(d)	200	1	200	2	400
Maintenance of records of racial, ethnic, gender and place of previous residency (2502-0371).	885.940(f)	200	1	200	.75	50
Administration of reserve (2502-0371)	885.945(d)	200	1	200	.5	100
Application for admission (2502-0371)	885.950(e)	200	1	3,600	.25	900
Waiting list (2502-0371)	885.950(b)(2)	200	12	2,400	.25	600
Notification of rejection due to ineligibility and review (2502-0371).	885.950(b)(3)	50	1	50	.25	12.5
Reexamination of family income (2502-0371)	885.950(c)	200	1	3,600	.25	900
Obligation of family (2502-0371)	885.955	200	1	3,600	.1	360
Lease (2502-0371)	885.965	200	1	3,600	.1	360
Security deposits (2502-0371)	885.972	200	1	3,600	.1	360
Justification for rent adjustment (2502-0371)	885.975	20	1	20	2	40
Analysis of utility cost increase (2502-0371)	885.980	200	1	200	2	400
Conditions for release of vacancy payments (2502-0371)	885.985	10	1	10	.5	5
Total annual burden						33,187.5

The annual reporting burden itemized for OMB clearance numbers (2502-0267), (2502-0187), (2502-0044), and (2502-0371) on this table was included in the calculation of annual burden at the most recent approval of each, and therefore does not represent an increase in the HUD information collection inventory. The burden hours for the items marked (1) are included under application submission requirements. The burden hours for the item marked (2) will not be incurred until the end of the 20 year PAC contract.

List of Subjects

24 CFR Part 812

Low and moderate income housing.

24 CFR Part 813

Low and moderate income housing.

24 CFR Part 885

Aged, Grant programs, housing and community development, Handicapped, Loan programs: housing and community development, Low- and moderate-income housing.

24 CFR Part 912

Low and moderate income housing.

24 CFR Part 913

Public housing.

For the reasons set forth in the preamble, Title 24 of the Code of Federal Regulations is revised to read as follows:

PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

1. The authority citation for Part 812—Definition of Family and Other Related Terms; Occupancy by Single Persons, continues to read as follows:

Authority: Sec. 3, United States Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d); Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. The definition of disabled person in § 812.2 is revised to read as follows:

§ 812.2 Definitions.

* * * * *

Disabled person. A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

* * * * *

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

3. The authority citation for Part 813—Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Section 8 Housing Assistance Payments Programs and Related Programs, is revised to read as follows:

Authority: Secs. 3, 5(b), 8, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 813.101 is revised to read as follows:

§ 813.101 Purpose and applicability.

This part establishes definitions, policies and procedures related to income limits and the determination of

eligibility, income and rent for applicants and tenants in housing assisted under section 8 of the United States Housing Act of 1937 ("the 1937 Act"). However, § 813.107 and the definitions of Tenant Rent, Total Tenant Payment, Utility Allowance and Utility Reimbursement found in § 813.102 do not apply to families assisted under the Housing Voucher Program (24 CFR Part 887). The definitions, policies and procedures also apply to projects that are assisted with loans under section 202 of the Housing Act of 1959 and that receive housing assistance payments under section 8 of the 1937 Act (see 24 CFR Part 885, Subpart B) or project assistance payments under section 202(h) of the Housing Act of 1959 (see 24 CFR Part 885, Subpart C). (See 24 CFR Part 913 for the analogous rule applicable to the Public Housing and Indian Housing Programs.)

5. In § 813.102, the definitions of disabled person, owner and utility allowance are revised to read as follows:

§ 813.102 Definitions.

* * * * *

Disabled person. A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

* * * * *

Owner. The meaning ascribed to such term in the pertinent program regulations. As used in this part, where appropriate, Owner shall also include a Borrower, as defined in 24 CFR Part 885.

* * * * *

Utility Allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the Contract Rent but is the responsibility of the Family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD under applicable sections of these regulations (see 24 CFR Parts 880, 881, 882, 883, 884, 885, and 886) of the monthly costs of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. (In the case of shared housing, the amount of the Utility Allowance for an assisted Family is calculated by multiplying the Utility Allowance for the entire unit by the ratio derived by dividing the number of bedrooms in the Assisted Family's private space by the number of bedrooms in the entire unit. In the case of an assisted individual sharing a one-bedroom unit with another person, the amount of the Utility Allowance for the assisted individual is one-half of the Utility Allowance for the entire unit).

* * * * *

6. Section 813.109(a) is revised to read as follows:

§ 813.109 Initial determination, verification, and reexamination of Family income and composition.

(a) *Responsibility for initial determination and reexamination.* The Owner or PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income and Total Tenant Payment, and for reexamination of Family income and composition at least annually, as provided in pertinent program regulations and handbooks (see, *e.g.*, Part 880, Subpart F and Part 881, Subpart F, which, for the purposes of this Part shall apply, as appropriate, to projects developed under Part 885, Subpart B; Part 882, Subparts B and E; Part 883, Subpart C; Part 884, Subpart B; Part 885, Subpart C; Part 886, Subparts A and C; and Part 887, Subpart H). As used in this part, the "effective date" of an examination or reexamination refers to (1) in the case of an examination for admission, the effective date of initial occupancy, and (2) in the case of a reexamination of an existing tenant, the effective date of the redetermined Total Tenant Payment.

* * * * *

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

7. The authority citation for 24 CFR Part 885 is revised to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 8, United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Section 885.1 is revised to read as follows:

§ 885.1 Purpose and policy.

(a) *Purpose.* The program under this part provides direct Federal loans under section 202 of the Housing Act of 1959 (42 U.S.C. 1701q) for housing projects serving elderly or handicapped families and individuals. The housing projects shall provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

(b) *General policy.* A loan made under this part shall be used to finance the construction or the substantial rehabilitation of projects for elderly or handicapped families, or for the acquisition with or without moderate rehabilitation of existing housing and related facilities for group homes for nonelderly handicapped individuals.

(c) *Applicability.* (1) Subpart B of this part applies to projects for elderly or handicapped families that receive loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937. No project for handicapped (primarily nonelderly) families is eligible for loans or housing assistance payments under Part B, except under a reservation of loan and contract authority made before October 1, 1988.

(2) Subpart C of this part applies to projects for nonelderly handicapped families receiving loans under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959. Subpart C may also apply to projects for handicapped families that received a reservation of loan authority under Subpart B under the circumstances described in § 885.775.

9. In § 885.5, the definition of "Elderly or Handicapped Family" is removed; the definitions of "Acquisition with or without moderate rehabilitation", "Application", "Handicapped person" and "Housing and Related Facilities" are revised; and definitions for "Elderly Family", "Field Office", "Handicapped Family", "Independent Public Accountant" and "Nonelderly Handicapped Families" are added, in alphabetical order, to read as follows:

§ 885.5 Definitions.

Acquisition with or without moderate rehabilitation means the acquisition of existing housing and related facilities to be used as group homes for the nonelderly handicapped. The development cost of such group homes may not include moderate rehabilitation costs (including expenditures for the rehabilitation alteration, conversion, or improvement of the housing and related facilities) in excess of 15 percent of the loan amount.

* * * * *

Application means the application for a section 202 fund reservation, including all required forms and exhibits submitted in response to an invitation for such applications, or a request for

admission to a project made by a family on a form prescribed by HUD.

* * * * *

Elderly family means:

(a) Families of two or more persons the head of which (or his or her spouse) is 62 years of age or older;

(b) The surviving member or members of any family described in paragraph (a) of this definition living in a unit assisted under this part with the deceased member of the family at the time of his or her death;

(c) A single person who is 62 years of age or older; or

(d) Two or more elderly persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Field office means any HUD Area, Insuring or Regional Office which is delegated authority to process applications under the section 202 program.

Handicapped family means:

(a) Families of two or more persons the head of which (or his or her spouse) is handicapped;

(b) The surviving member or members of any family described in paragraph (a) of this definition living in a unit assisted under this part with the deceased member of the family at the time of his or her death;

(c) A single handicapped person over the age of 18; or

(d) Two or more handicapped persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Handicapped person or individual means any adult having an impairment which is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if he or she is developmentally disabled, *i.e.*, if he or she has a severe chronic disability that (a) is attributable to a mental or physical impairment or combination of mental and physical impairments; (b) is manifested before the person attains age twenty-two; (c) is likely to continue indefinitely; (d) results in substantial functional limitations in three or more of the following areas of major life activity: (1) Self-care, (2) receptive and responsive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, and (7) economic self-sufficiency; and (e) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated. A person shall also be considered to be handicapped if he or she has a chronic mental illness, *i.e.*, if he or she has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (*e.g.*, by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, recreation, etc.), and whose impairment could be improved by more suitable housing conditions. A person whose sole impairment is alcoholism or drug addition will not be considered to be handicapped for the purposes of the section 202 program.

Housing and related facilities means rental or cooperative housing structures constructed or substantially rehabilitated as permanent residences for use by elderly or handicapped families, or acquired with or without moderate rehabilitation for use by nonelderly handicapped families as group homes. The term includes structures suitable for use by families residing in the project or in the area, such as cafeterias or dining halls, community rooms, or buildings, or other essential service facilities. In the case of acquisition with or without moderate rehabilitation, at least three years must have elapsed from the later of the date of completion of the project or the beginning of occupancy to the date of the application for a section 202 fund reservation. Except for intermediate care facilities for the mentally retarded and individuals with related conditions (see § 885.710(b)(4)(vii)), this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities.

Independent public accountant means a certified public accountant or a licensed or registered public accountant, having no business relationship with the Borrower or Sponsor except for the performance of audit, systems work and tax preparation. If not certified, the independent public accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant", only certified public accountants may be used.

Nonelderly handicapped family means a handicapped family where the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project.

§ 885.7 [Removed]

10. Section 885.7 is removed.

11. The heading of Subpart B is revised to read as follows:

Subpart B—Section 202 Projects for the Elderly or Handicapped—Section 8 Assistance

12. In § 885.200, the introductory text in paragraph (b), and paragraph (c), are revised to read as follows:

§ 885.200 Allocation of loan fund authority.

* * * * *

(b) Field Office Directors will determine the amount of section 202 loan authority available under this subpart to be allocated to each allocation area in accordance with 24 CFR 791.404. In determining the number of units to be allocated to a specific allocation area, the Field Office Director must consider the three-year goals set forth in Housing Assistance Plans and the proportionality requirements with respect to housing type and household type. Where loan fund authority allocated to an allocation area would not be adequate for a feasible project, the Field Office Director may either:

* * * * *

(c) Field Office Directors will set aside sufficient contract authority for the Section 8 Housing Assistance Payments Program for use in connection with projects to be financed under this subpart.

13. In § 885.205, paragraph (b) is revised; paragraph (c)(3) is removed; and paragraphs (c)(4), (5) and (6) are redesignated as (c)(3), (4) and (5). Revised paragraph (b) reads as follows:

§885.205 Announcement of fund availability and invitations for applications for section 202 fund reservations.

* * * * *

(b) Each field office shall publish a single invitation in newspapers of general circulation serving the allocation areas in which the housing is desired at least once a week for two consecutive weeks. The field office shall also notify minority media, minority organizations involved in housing and community development, and groups with a special interest in housing for the elderly and physically handicapped. Copies of the invitation shall be available in the field office.

* * * * *

14. In §885.210, paragraph (b)(22) is removed; paragraphs (b)(23) and (24) are redesignated as paragraphs (b)(22) and (b)(23) respectively; the reference to § 885.205(c)(6) in undesignated paragraph after paragraph (b)(13) is revised to refer to § 885.205(c)(5); and paragraphs (b)(5), (b)(6), (b)(13)(i), (b)(19), the introductory text to the redesignated paragraph (b)(22), and redesignated paragraph (b)(22)(iv) and (vii) are revised to read as follows:

§885.210 Contents of applications.

* * * * *

(b) * * *

(5) A narrative description of the anticipated occupancy (elderly and physically handicapped).

(6) A statement whether the Borrower (or Sponsor) has submitted or is planning to submit other applications under this part during the current fiscal year. The Borrower must indicate the city and State where any other proposed project will be located, the number of units requested, and the field office where the proposal was or will be submitted.

* * * * *

(13) * * *

(i) Have the necessary legal authority to finance, construct or substantially rehabilitate and maintain the project and to apply for and receive the proposed loan.

* * * * *

(19) A description of the Borrower's capability to sponsor, develop, own, manage and provide appropriate services in connection with the proposed project.

* * * * *

(22) The following specific information with respect to the proposed project:

* * * * *

(iv) Evidence that the proposed construction or substantial rehabilitation is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action to make the construction or substantial rehabilitation permissible and the basis for belief that the proposed action will be completed successfully before the receipt of the conditional commitment for direct loan financing (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

* * * * *

(vii) A statement that gross rents (contract rents plus any utility allowance) will not exceed the applicable fair market rents by more than the amount allowed under §880.204(b)(1) or §881.204(b)(1). The applicable fair market rents are those published in accordance with §888.105.

* * * * *

15. The introductory paragraph to §885.215 is revised to read as follows:

§885.215 Limitation on number of units.

No organization shall participate as Sponsor, Cosponsor, or Borrower in the filing of an application or applications for a reservation of section 202 funds under this Subpart in a single region in a single fiscal year in excess of that necessary to finance the construction or substantial rehabilitation of 300 units of housing and related facilities.

* * * * *

16. In §885.220, paragraph (f) is revised to read as follows:

§885.220 Review of application for fund reservation.

* * * * *

(f) The ranking list developed under paragraph (e) of this section may be modified by the Field Office Director if selection solely on the basis of the ranking would result in a violation of site and neighborhood standards.

17. In §885.225, paragraph (a)(1) is revised to read as follows:

§885.225 Approval of applications.

(a) * * *

(1) The amount of the Section 202 Fund Reservation, the number and mix of units, and the location of the proposed project.

* * * * *

18. Section 885.230 is revised to read as follows:

§885.230 Duration of section 202 fund reservations.

The Field Office Manager, subject to the approval of the Assistant Secretary, may cancel a fund reservation at any time if it can be established that the Borrower is not making satisfactory progress toward the start of construction or substantial rehabilitation and shall cancel any reservations of Section 202 loan funds for projects for which the construction or substantial rehabilitation is not begun within 18 months after the notice of section 202 fund reservation is issued, unless an extension of time, not to exceed six months is requested of and granted by the Field Office Manager.

§§ 885.400–885.425 [Added to Subpart B; Subpart D heading removed]

19. Sections 885.400, 885.405, 885.410, 885.412, 885.415, 885.416, 885.420, and 885.425 retain their current section designations and are moved from Subpart D and are added to Subpart B; the heading of Subpart D is removed.

§§ 885.410 [Amended]

20. In § 885.410, paragraphs (b) (4) and (5) and paragraphs (c) (4) and (5) are removed.

21. In § 885.415, paragraphs (m), (n), and (p) are revised to read as follows:

§ 885.415 Requirements prior to initial loan closing.

* * * * *

(m) Construction or Substantial Rehabilitation Contract between the Borrower and General Contractor. See § 885.416 for contract award requirements.

(n) Assurance of Completion of Construction or Substantial Rehabilitation Contract in the form of corporate surety bond for payment and performance, each in the amount of 100 percent of the amount of the HUD-estimated construction or substantial rehabilitation cost, or a cash escrow in the amount of 25 percent of the HUD-estimated construction or substantial rehabilitation cost. All surety companies issuing bonds must be satisfactory to the Assistant Secretary.

* * * * *

(p) Contractor's and Subcontractor's Certifications Concerning Labor Standards and Prevailing Wage Requirements.

22. The heading of Section 885.425 is revised and paragraph (a) of the section is revised to read as follows:

§ 885.425 Completion of construction and substantial rehabilitation, execution of HAP contract, and cost certification and approvals by HUD.

(a) The Borrower must satisfy the requirements for completion of construction and substantial rehabilitation and approvals by HUD before submission of a final requisition for disbursement of loan proceeds.

* * * * *

23. A new § 885.427 is added to read as follows:

§ 885.427 Federal preferences.

The provisions of § 880.613 of this chapter are applicable to projects assisted under this Subpart B.

24. Subpart C is added to read as follows:

Subpart C—Section 202 Projects for Nonelderly Handicapped Families and Individuals—Section 162 Assistance

Definitions

Sec.

885.700 Definitions.

Application Procedures and Program Requirements

885.702 Allocation of authority.
885.705 Announcement of fund availability and invitation for applications.
885.710 Application contents.
885.717 Project standards.
885.720 Project size limitations.
885.725 Cost containment and modest design standards.
885.727 Prohibited facilities.
885.730 Site and neighborhood standards.
885.735 Prohibited relationships.
885.740 Other Federal requirements.

Selection of Applications and Duration of Fund Reservation

885.750 Review of applications for fund reservation.
885.755 Approval of applications.
885.770 Duration of section 202 fund reservation.
885.775 Transition.

Direct Loan Financing Procedures

885.780 Submission of site information.
885.800 Request for direct loan processing.
885.805 Approval of requests for direct loan financing.
885.807 Operating cost standard.
885.810 Amount and terms of financing.
885.812 Prepayment of loans.
885.815 Requirements prior to initial loan closing.
885.816 Requirements for awarding construction contracts.
885.820 Loan disbursement procedures
885.825 Completion of cost certification.

Project Assistance Contract

885.900 Project Assistance Contract.
885.905 Term of PAC.
885.910 Maximum annual commitment and project account.
885.915 Leasing to eligible families.
885.920 PAC administration.
885.925 Default by Borrower.
885.930 Notice upon PAC expiration.

Project Management

885.940 Responsibilities of Borrower.
885.945 Replacement reserve.
885.950 Selection and admission of tenants.
885.955 Obligations of the family.
885.960 Overcrowded and underoccupied units.
885.965 Lease requirements.
885.970 Termination of tenancy and modification of lease.
885.972 Security deposits.
885.975 Adjustment of rents.
885.980 Adjustment of utility allowances.
885.985 Conditions for receipt of vacancy payments for assisted units.

Subpart C—Section 202 Projects for Nonelderly Handicapped Families and Individuals—Section 162 Assistance

Definitions

§ 885.700 Definitions.

As used in this Subpart C:

Agreement to enter into project assistance contract (PAC) means the agreement between the Borrower and HUD which provides that, upon satisfactory completion of the project, HUD will enter into the PAC with the Borrower.

Annual income is defined in Part 813 of this chapter. In the case of an individual residing in an intermediate care facility for the mentally retarded that is assisted under Title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For the purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the family would receive if assisted under Title XVI of the Social Security Act.

Assisted unit means a dwelling unit that is eligible for assistance under a PAC.

Contract rent means the total amount of rent specified in the PAC as payable by HUD and the family to the Borrower for an assisted unit or residential space.

Family (eligible family) means a handicapped family (as defined in § 885.5) that meets the project occupancy requirements approved by HUD and, if the family occupies an assisted unit, meets the lower-income requirements described in § 813.102 of this chapter, as modified by the definition of annual income in this section.

Gross rent is defined in Part 813 of this chapter.

Group home means a single family residential structure designed or adapted for occupancy by nonelderly handicapped individuals.

Housing for handicapped families means housing and related facilities occupied by handicapped families that are primarily nonelderly handicapped families.

Independent living complex means a project designed for occupancy by nonelderly handicapped families in separate dwelling units where each dwelling unit includes a kitchen and a bath.

Operating costs means expenses related to the provision of housing and excludes expenses related to administering, or managing the provision of, supportive services. Operating costs include:

(a) Administrative expenses, including salary and management expenses related to the provision of shelter.

(b) Maintenance expenses, including routine and minor repairs and groundskeeping.

(c) Security expenses.

(d) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. Operating costs exclude telephone services for families.

(e) Taxes and insurance.

(f) Allowances for reserves.

Project account means a specifically identified and segregated account for each project which is established in accordance with § 885.910(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year.

PAC (project assistance contract) means the contract entered into by the Borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PAC.

Project assistance payment means the payment made by HUD to the Borrower for assisted units as provided in the PAC. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit in an independent living complex when the utility allowance is greater than the total tenant payment. A project assistance payment, known as a "vacancy payment", may be made to the Borrower when an assisted unit (or residential space in a group home) is vacant, in accordance with the terms of the PAC.

Rent, in the case of a unit in a cooperative project, means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Tenant rent means the monthly amount defined in, and determined in accordance with Part 813 of this chapter.

Total tenant payment means the monthly amount defined in, and determined in accordance with Part 813 of this chapter.

Utility allowance is defined in Part 813 of this chapter and is determined or approved by HUD.

Utility reimbursement is defined in Part 813 of this chapter.

Vacancy payment means the project assistance payment made to the Borrower by HUD for a vacant assisted unit (or residential space in a group home) if certain conditions are fulfilled, as provided in the PAC. The amount of the vacancy payment varies with the

length of the vacancy period and is less after the first 60 days of any vacancy.

Application Procedures and Program Requirements

§ 885.702 Allocation of authority.

(a) *Headquarters Reserve.* Up to 15 percent of the section 202 loan authority made available for the development costs of housing for handicapped families under this section may be retained by the Assistant Secretary for subsequent allocation to specific areas and communities under section 213(d)(4) of the Housing and Community Development Act of 1974.

(b) *Allocations.* The Assistant Secretary will allocate the amounts available for development costs of housing for handicapped families, less any amounts made available for the Headquarters Reserve under paragraph (a) of this section and amendments under § 885.755(e), to allocation areas. The size of the allocation area will depend on the amount of loan authority available for allocation and the number of feasible projects the loan authority will support. The amount of the allocations will be based on the relative needs of the allocation areas as reflected in available census data on the number of the handicapped individuals in the areas and will be adjusted to take into consideration the relative differences between the areas in the costs of providing housing. Funds allocated to an allocation area may be reallocated to another area under the circumstances described at § 885.750(d)(2).

(c) *Availability of loan authority for housing for the elderly.* If the approvable applications under this Subpart require less than the loan authority that is made available for development costs of housing under this Subpart, the remaining loan authority shall be made available for housing for the elderly under Subpart B of this part, to the extent that housing assistance under section 8 of the United States Housing Act of 1937 is available in connection with such loan authority.

§ 885.705 Announcement of fund availability and invitation for applications.

(a) *Announcement of fund availability.* Following an allocation of authority under § 885.700 above, HUD will publish an announcement of fund availability in the **Federal Register**. The announcement will indicate:

(1) The amount of loan authority (and approximate number of units) made available for housing for handicapped families within each allocation area;

(2) The deadline for receipt of applications; and

(3) Other appropriate guidance to prospective Sponsors.

(b) *Invitation for applications.* Each field office shall publish an invitation for applications for section 202 fund reservation in newspapers of general circulation serving the field office jurisdiction. The field office shall also notify minority media, minority organizations involved in housing and community development, and groups with special interest in housing for handicapped families. Copies of the invitation will be available in the field office.

§ 885.710 Application contents.

(a) *Application.* Each application must include all of the information, materials, forms, and exhibits listed in paragraph (b) of this section. In addition, the application may include site information specified under § 885.780. HUD will review applications and make selections under § 885.750 based on information provided in the application.

(b) *Application contents.* Each application must include:

(1) The name, address, and telephone number of the Sponsor.

(2) The name, title, address, and telephone number of the officer or member of the board of directors of the Sponsor to whom communications should be addressed.

(3) The dollar amount of the section 202 direct loan requested.

(4) A narrative description of the proposed housing, consistent with requirements of §§ 885.717 through 885.727, including:

(i) The name of the locality in which the proposed project is to be developed;

(ii) The development method proposed to be used (new construction, substantial rehabilitation, or, if a group home, acquisition with or without moderate rehabilitation). If the project will be developed using innovative construction or rehabilitation methods or technologies that promote construction efficiencies, the proposed methods or technologies should be identified;

(iii) Number and types of structures;

(iv) Number of stories;

(v) Number of units by size (number of bedrooms) for an independent living complex, or the number of bedrooms and the number of residents housed in each group home;

(vi) Special amenities or features. If the narrative description indicates that the housing would not comply with the cost containment and modest design standards of § 885.725 (a) through (c), the Sponsor must submit evidence demonstrating that the proposed housing is eligible for an exception from these standards under § 885.725(d).

(vii) For intermediate care facilities that are funded by the Health Care Financing Administration that serve the mentally retarded and individuals with related conditions, evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies, and will receive funding from sources other than HUD for a rent contribution and for the costs of the intermediate care, and such other information as HUD may require to determine the feasibility of the intermediate care facility.

(5) A narrative description of the anticipated occupancy. The Sponsor must propose project occupancy requirements that limit occupancy to one or more of the following categories: Persons with chronic mental illness, developmental disabilities, or physical handicaps. The Sponsor must demonstrate a capacity to serve the proposed occupancy group or groups.

(6) A service plan description that includes:

(i) A description of the range of supportive services proposed to be provided to the families in the occupancy category identified by the Sponsor under § 885.710(b)(5) above, including:

(A) The name(s) of the agency(s) will be responsible for providing supportive services and, if an agency is not the Sponsor, a letter of intent from the agency indicating its willingness and ability to provide the services;

(B) The manner in which such services will be provided;

(C) The services that will be provided on- and off-site; and

(D) The staffing plan including residential supervision (if any) and other staff necessary to provide the proposed supportive services.

(ii) Evidence of funding sources for the supportive services that will be provided for compensation, including State and local funds available to assist in the provision of such services, or evidence of commitment to provide the supportive services from agencies that will not be compensated. If State and local funds will be used, the application must demonstrate that the proposal does not conflict with State or local plans and policies governing the development and operation of facilities to serve handicapped individuals meeting the proposed project occupancy requirements.

(7) Evidence demonstrating that there is an effective demand for the proposed

housing in the areas to be served by the project and demonstrating that this demand is likely to continue through the term of the loan.

(8) A statement whether the Sponsor or any affiliated entity has submitted or is planning to submit other applications as a Sponsor or Cosponsor under this part during the current fiscal year. The Sponsor must also indicate the city and State where any other proposed project will be located, the number of units requested, and the field office where the proposal was or will be submitted.

(9) A request for preliminary determination of eligibility as a nonprofit Sponsor, on a form prescribed by HUD.

(10) A statement describing the Sponsor's ties to the community including any statements of support for the project by members of the community in which the project is to be located and State and local organizations familiar with the needs of handicapped individuals meeting the proposed occupancy requirements.

(11) The names and addresses of the officers and directors of the Sponsor, and such other information as required by HUD, together with a resolution, on a form prescribed by HUD, adopted by the Sponsor's board of directors, agreeing that all officers and directors of the Sponsor and the Borrower will be required to submit conflict of interest certifications.

(12) Satisfactory evidence that the Sponsor: (i) Has the necessary legal authority to sponsor the project and to assist the Borrower to finance, acquire (with or without moderate rehabilitation), construct or substantially rehabilitate and maintain the project, and to apply for and receive the proposed loan; (ii) has an effective tax exemption ruling from the Internal Revenue Service, is a nonprofit corporation organized in the Commonwealth of Puerto Rico that is exempt from income taxation under Puerto Rican law, or is a nonprofit consumer cooperative that is exempt from income taxation under State law, has never been liable for the payment of Federal income taxes, and does not pay patronage dividends; and (iii) will form a Borrower (as defined in § 885.5) after the issuance of the section 202 fund reservation, will cause the Borrower to file a request for determination of eligibility and a request for direct loan financing under § 885.800, and will provide sufficient resources to the Borrower to ensure the development and long-term operation of the project.

(13) Evidence of previous participation in HUD programs, if any, by the Sponsor, its officers or directors, on such form as may be prescribed by HUD, and identification of all section 202 fund reservations issued to the Sponsor or any entity affiliated with the Sponsor since May 1, 1976.

(14) A description of any other rental housing projects or any medical facilities sponsored, owned or operated by the Sponsor.

(15) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in contracting for services with minority business enterprises or minority groups.

(16) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(17) A description of the Sponsor's ability and willingness to sponsor and to assist the Borrower to develop, own, manage, and provide appropriate services in connection with housing for the nonelderly handicapped.

(18) An estimate of start-up expenses and the source of funds to meet these expenses. If the Sponsor plans to use section 106(b) seed money loans, an application for such loan must be submitted, with required attachments.

(19) Evidence of the Sponsor's financial ability and willingness to fund the minimum capital investment under § 885.810(i) and to ensure the development and long-term operation of the project, including copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated.

(20) The housing consultant's resume and a copy of the consultant contract (if consultant services have been used by the Sponsor).

(21) Evidence that the Sponsor has notified the State single point of contact of the application for review and comment under 24 CFR Part 52 and Executive Order No. 12372—Intergovernmental Review of Federal Programs.

(22) A signed certification of the Sponsor's intention to comply with the nondiscrimination and equal opportunity requirements of § 885.740(a).

(23) A demonstration that the Sponsor meets all other requirements imposed by HUD. Notice of such requirements will be made available to Sponsors before submission of their applications.

§ 885.717 Project standards.

(a) *Property standards.* Projects under this Subpart must comply with HUD Minimum Property Standards.

(b) *Minimum group home standards.* Each group home must provide a minimum of 290 square feet of pro rated space for each resident, including a minimum area of 80 square feet for each resident in a shared bedroom (with no more than two residents occupying a shared bedroom) and a minimum area of 100 square feet for a single occupant bedroom; at least one full bathroom for every four residents; space for recreation at indoor and outdoor locations on the project site; and sufficient storage for each resident in the bedroom and other storage space necessary for the operation of the home.

(c) *Accessibility requirements.* (1) Projects under this Subpart must comply with the Uniform Federal Accessibility Standards (24 CFR Part 40, Appendix A), HUD's regulations implementing section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8) and HUD's regulations implementing the Fair Housing Act (24 CFR Part 100)

(2) All entrances, common areas, units to be occupied by a residential supervisor, and amenities must be readily accessible to and usable by persons with physical handicaps.

(3) In projects for chronically mentally ill individuals, a minimum of ten percent of all dwelling units in an independent living complex (or ten percent of all bedrooms and bathrooms in a group home), but at least one of each such space, must be designed to be accessible or adaptable for persons with physical handicaps.

(4) In projects for developmentally disabled or physically handicapped individuals, all dwelling units in an independent living complex (or all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical handicaps. A project involving substantial rehabilitation or an acquisition with or without moderate rehabilitation may provide a lesser number if: (i) The cost of providing full accessibility makes the project financially infeasible; (ii) less than one-half of the intended occupants have mobility impairments; and (iii) the project complies with the requirements of 24 CFR 8.23.

(5) For the purposes of paragraphs (c) (2), (3) and (4) of this section, "Accessible" and "adaptable" are defined in 24 CFR Part 40, Appendix A.

§ 885.720 Project size limitations.

(a) *Maximum project size.* Projects under this subpart are subject to the following project size limitations:

(1) Group homes may not be designed to serve more than 15 persons on one site;

(2) Independent living complexes for chronically mentally ill individuals may not be designed to serve more than 20 persons on one site; and

(3) Independent living complexes for handicapped families in developmental disability or physically handicapped occupancy categories may not have more than 24 units nor more than 24 households on one site. For the purposes of this section, household has the same meaning as handicapped family, except that unrelated handicapped individuals sharing a unit (other than a handicapped person living with another person who is essential to the handicapped person's well-being) are counted separate households. For independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories, units with three or more bedrooms may only be developed to serve handicapped families of one or two parents with children.

(b) *Additional limitations.* Based on the amount of loan authority appropriated for a fiscal year, HUD may impose additional limitations on the number of units or residents that may be proposed under an application for section 202 loan fund reservation. This unit limitation will be published in the annual announcement of fund availability or the invitation for section 202 fund reservation under § 885.705.

(c) *Exemptions.* On a case-by-case basis, HUD may approve independent living complexes that do not comply with the project size limitations prescribed in paragraphs (a)(2), (a)(3) or (b) of this section. HUD may approve such projects if the Sponsor demonstrates:

(1) The increased number of units is necessary for the economic feasibility of the project;

(2) A project of the size proposed is compatible with other residential development and the population density of the area in which the project is to be located;

(3) A project of the size proposed can be successfully integrated into the community; and

(4) A project of the size proposed is marketable in the community.

§ 885.725 Cost containment and modest design standards.

(a) *Restrictions on amenities.* Projects must be modest in design. Except as provided in paragraph (d) of this section below, amenities must be limited to those amenities, as determined by HUD, that are generally provided in unassisted decent, safe and sanitary housing for lower income families in the market area. Amenities not eligible for HUD funding include balconies, atriums, decks, bowling alleys, swimming pools, saunas and jacuzzis. Dishwashers, trash compactors, and washers and dryers in individual units will not be funded in independent living complexes. The use of durable materials to control or reduce maintenance, repair and replacement costs is not an excess amenity.

(b) *Unit sizes.* For independent living complexes, HUD will establish limitations on the size of units and number of bathrooms, based on the number of bedrooms that are in the unit.

(c) *Special spaces and accommodations.* The costs of construction of special spaces and accommodations may not exceed 10 percent of the total cost of construction, except as provided in paragraph (d) of this section below. Special spaces and accommodations include multipurpose rooms; game rooms; libraries; lounges; and, in independent living complexes, central kitchens and dining rooms. Special spaces and accommodations exclude offices, halls, mechanical rooms, laundry rooms, and parking areas, and (1) dwelling units and lobbies in independent living complexes; and (2) bedrooms, living rooms, dining and kitchen areas, shared bathrooms, and resident staff dwelling units in group homes.

(d) *Exceptions.* HUD may approve a project that does not comply with the cost containment and modest design standards of paragraphs (a) through (c) of this section if:

(1) The Sponsor demonstrates a willingness and ability to contribute the incremental development cost and continuing operating costs associated with the additional amenities or design features; or

(2) The proposed project involves substantial rehabilitation or acquisition with or without moderate rehabilitation, the additional amenities or design features were incorporated into the existing structure before the submission of the application, and the total development cost of the project with the additional amenities or design features does not exceed the cost limits described in § 885.810.

§ 885.727 Prohibited facilities.

Project facilities may not include commercial spaces, infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops. Except for office space used by the Borrower exclusively for the administration of the project, project facilities may not include office space.

§ 885.730 Site and neighborhood standards.

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063 and implementing HUD regulations.

(c) New construction sites must meet the following requirements.

(1) The site must not be located in an area of minority concentration except as permitted under paragraph (c)(2) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(2) A project may be located in an area of minority concentration only if:

(i) Sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (c)(3) of this section for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot otherwise feasibly be met in that housing market area (see paragraph (c)(4) of this section for further guidance on this criterion).

(3)(i) "Sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for lower income minority families and in relation to the racial mix of the locality's population.

(ii) Units may be considered to be "comparable opportunities" if they have

the same household type and tenant type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(iii) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD assisted housing on the availability of housing choices for lower income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice.

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority families who wish to find housing outside areas of minority concentration.

(E) Minority families have benefitted from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

(F) A significant proportion of minority households have been successful in finding units in non-minority areas under the Section 8 Certificate and Housing Voucher programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(4) Application of the "overriding housing needs" criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An "overriding housing need", however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(e) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(f) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(g) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

(h) Projects must be located in neighborhoods where other family housing is located. Except as provided below, projects may not be located adjacent to the following facilities, or in areas where such facilities are concentrated: schools or day-care centers for handicapped persons, workshops, medical facilities, or other housing primarily serving handicapped persons. Projects may be located adjacent to other housing primarily serving handicapped persons if the projects together do not exceed the project size limitations under § 885.720(a).

§ 885.735 Prohibited relationships.

(a) *Conflicts of interest.* Officers, directors, trustees, members, stockholders and authorized representatives of the Borrower, and officers and directors of the Sponsor may not have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings or equipment, construction of the project, procurement of the site or other matters related to the development and operation of the project. Management contracts (including associated management fees) entered into by the Borrower with the Sponsor or the Sponsor's nonprofit affiliate will not constitute a conflict of interest if no more than two persons salaried by the Sponsor or management affiliate serve as nonvoting members on the Borrower's board of directors.

(b) *Interest in earnings.* No part of the net earnings of the Borrower or Sponsor may inure to the benefit of any private shareholder, contributor, or individual.

(c) *Control of Borrower or Sponsor.* Neither the Borrower nor the Sponsor may be controlled by, or under the direction of, persons or entities seeking to derive profit or gain as a result of activities undertaken by the Borrower or Sponsor.

(d) *Provision of services.* A person or an entity (including an affiliated entity) may not provide services to a project in more than one of the following capacities: attorney, architect, contractor, housing consultant, management agent, or seller of the site for the project, except that the same person or entity may serve a project as management agent and housing consultant.

§ 885.740 Other Federal requirements.

(a) *Nondiscrimination and equal opportunity.* Participation in this program requires compliance with:

(1) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19) (Fair Housing Act) and its implementing regulations; Executive Order No. 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8.

(3) The requirements of Executive Order No. 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and the implementing regulations at 24 CFR Part 135;

(5) The requirements of Executive Order Nos. 11625, 12432, and 12138 (Minority and Women's Business Enterprises);

(6) The affirmative fair housing marketing requirements of 24 CFR Part

200, Subpart M and the implementing regulations at 24 CFR Part 108.

(7) The fair housing advertising and poster guidelines, 24 CFR Parts 109 and 110.

(b) *Environmental.* The National Environmental Policy Act of 1969, HUD's implementing regulations at 24 CFR Part 50, including the related authorities described in 24 CFR 50.4, and the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3601) apply to this program. For the purposes of Executive Order No. 11988, Floodplain Management, all applications for intermediate care facilities for the mentally retarded and individuals with related conditions (see § 885.710(b)(4)(vii)) shall be treated as critical actions requiring consideration of the 500-year flood plain.

(c) *Flood insurance.* The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001) applies to this program.

(d) *Labor standards.* (1) For projects that are designed for dwelling use by 12 or more handicapped families (other than projects acquired without rehabilitation), participation in this program is subject to the following requirements.

(i) Not less than the wages prevailing in the locality, as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a–276a–5), must be paid to all laborers and mechanics employed in the construction or rehabilitation of the project. HUD may waive the Davis-Bacon requirements if laborers or mechanics voluntarily donate their services without full compensation for the purposes of lowering the costs of construction or rehabilitation; the laborers or mechanics are not otherwise employed in the construction or rehabilitation of projects that are assisted under this part and designed for dwelling use by 12 or more families; and HUD determines that any amounts saved are fully credited to the Borrower undertaking the construction or rehabilitation.

(ii) Except where the Davis-Bacon requirements have been waived under paragraph (c)(1) of this section, contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(iii) Sponsors, Borrowers, contractors and subcontractors must comply with all related rules, regulations, and requirements.

(2) For the purposes of this paragraph (d), an independent living complex is designed for use by 12 or more families if the complex includes 12 or more units. This paragraph (d) does not apply to group homes.

(e) *Displacement and relocation assistance.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) as amended by the Uniform Relocation Assistance Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17, approved April 2, 1987) (URA) and government-wide implementing regulations at 49 CFR Part 24 set forth relocation assistance requirements that apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of acquisition, rehabilitation or demolition for a project assisted under this part.

(2) For projects involving applications that are submitted without evidence of control of an approvable site, a displacement from the real property is covered by the URA if it occurs on or after the date that the Sponsor obtains control of an approvable site. For projects involving applications that are submitted with evidence of control an approvable site, a displacement from the real property is covered by the URA if it occurs on or after the date that the application is submitted. Displacements occurring on or after these dates, however, may not be covered if:

(i) The person has been evicted for cause based upon a serious or repeated violation of the material terms of the lease or occupancy agreement and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the real property after the date specified above, but received prior written notice of the expected displacement;

(iii) The person is an owner-occupant and has been informed that the real property will not be acquired for the project under the threat of eminent domain; or

(iv) The Sponsor (Borrower) determines that the displacement did not occur as a direct result of acquisition, rehabilitation, or demolition for the project, and HUD concurs in that determination.

(3) If a person is displaced from the real property before the date specified above and either HUD or the Sponsor (Borrower) determines that the displacement resulted from acquisition, rehabilitation, or demolition, the person shall be eligible for relocation assistance as a displaced person.

(4) The Sponsor (Borrower) may, at any time, request a HUD determination whether a displacement will be covered by the URA and the implementing regulations.

(5) A displaced person's eligibility for relocation assistance is subject to the requirements in 49 CFR Part 24.

(f) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 (except as superseded in paragraph (f)(2) of this section) apply to the dwellings (except zero-bedroom dwelling units) in housing assisted under this subpart which (i) was constructed or substantially rehabilitated before 1978 and (ii) in which any child under seven years of age resides or is expected to reside.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to covered structures for which assistance is provided under this program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to the program, the requirements prescribed in Subpart C of 24 CFR Part 35.

(ii) The following definitions apply to this paragraph (f):

Applicable surface means all intact and nonintact painted interior and exterior surfaces of a residential structure.

Chewable surface means all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means excessive absorption of lead: that is, a confirmed concentration of lead in whole blood of 25 μg/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint surface means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

(iii) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, the Sponsor must inspect the structure for defective paint surfaces before it submits site information under § 885.780. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is

required. Correction of defective surfaces found during the initial inspection must be completed before initial occupancy of the project. Correction of defective paint conditions discovered at periodic inspection must be completed within 30 days of their discovery. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(iv) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, if the Borrower is presented with test results that indicate that a child under the age of seven years occupies the structure and has an elevated blood lead level (EBL), the Borrower must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analysis (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) Where abatement will result from rehabilitation activities planned (*i.e.*, where all applicable surfaces will be replaced, covered or otherwise abated as described in this part), these surfaces need not be tested.

(vi) In lieu of the procedures set forth in the preceding clause, the Borrower may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vii) The Borrower must take appropriate action to protect tenants from hazards associated with abatement procedures.

(viii) The Borrower must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the Borrower must keep the test results, and, if applicable, the certification of treatment indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this section, these surfaces do not have to be tested or treated at any subsequent time.

(g) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR Part 52 are applicable to this program.

Selection of Applications and Duration of Fund Reservation

§ 885.750 Review of applications for fund reservation.

(a) *Preliminary evaluation.* (1) HUD will perform a preliminary review of every application. To be eligible for technical review, the application must meet each of the criteria described below.

(i) The application must be received by HUD at the appropriate address within the time period specified in the invitation, and must be complete. If an application is determined to be missing documents, however, the Sponsor shall be advised in writing of the omissions and that additions will be accepted if they are received on or before a specified date.

(ii) The Sponsor must be eligible to participate in the program.

(iii) The proposed facilities and proposed occupancy requirements must be eligible under the program.

(iv) The application must include a supportive services plan meeting the requirements of § 885.710(b)(6).

(2) Following the completion of the preliminary evaluation of all applications, HUD will notify Sponsors of applications that are found to be unapprovable. The notification will be in writing and will explain the reasons for HUD's action.

(b) *Technical review processing.* (1) HUD will perform a technical review of each application that is found to be acceptable under the preliminary evaluation. Technical review processing will consist of the following:

(i) HUD will review the application to determine if:

(A) The Sponsor has demonstrated financial and management capability to carry the project through to completion.

(B) The Sponsor has previous experience in developing or operating housing, medical, or other facilities, or experience in providing supportive services to individuals of the disability group(s) proposed to be housed.

(C) The Sponsor has made a commitment and will be able to provide the preliminary development costs and the minimum capital investment.

(D) The narrative description submitted under § 885.710(b)(4) is appropriate for handicapped individuals meeting the proposed project occupancy requirements, and indicates that the proposed project is likely to comply with the project standards described in § 885.717, the project size limitations of § 885.720, the modest design and cost containment standards, of § 885.725, and the facility prohibitions of § 885.727.

(E) The locality (or the site, if the Sponsor has submitted evidence under § 885.780) is likely to meet the site and neighborhood standards of § 885.730. If the Sponsor has submitted evidence of site control with the application, HUD will also determine if the site is acceptable under § 885.780, including environmental review and flood hazard requirements. If a Sponsor has provided evidence of site control and HUD determines that the site is unacceptable, HUD will process the application as if no site evidence has been submitted provided the Sponsor has indicated a willingness to develop on another site.

(F) The service plan description under § 885.710(b)(6) is directed to the needs of individuals with the type of disability the project proposes to serve, and demonstrates the Sponsor's ability to provide or assure the provision of the proposed supportive services to such individuals.

(G) To the extent that supportive services will be funded by State or local agencies, the proposed project does not conflict with State or local plans and policies governing the development and operation of facilities to serve individuals with the type of disability the project proposes to serve.

(H) There is evidence of effective demand for the proposed project.

(I) The Sponsor is in compliance with nondiscrimination and equal opportunity requirements.

(J) The application is otherwise responsive to the invitation for applications and the requirements of this part.

(ii) During technical review processing, HUD will also review the comments (if any) received from the State single point of contact, and will determine if the proposed project is located in a locality that is acceptable under § 885.780(c)(3)(i).

(2) Based on the factors set forth in this paragraph (b), HUD will determine which applications are approvable. Selections will be made in accordance with paragraphs (c) and (d) of this section.

(c) *Ranking.* (1) HUD will assign a rating to each application found to be approvable under technical review processing, based upon HUD's assessment of:

(i) The degree to which the Sponsor has demonstrated, relative to other proposals: (A) (Its capacity and commitment to assist the Borrower to carry the project through to long-term operation; (B) the Sponsor's ability and commitment to provide the Borrower with the financial resources to establish and ensure the long-term operation of the proposed project; (C) the need in the locality for a project serving handicapped individuals meeting the proposed project occupancy requirements; (D) support for the proposed project from the local community, including State and local organizations familiar with the needs of handicapped individuals meeting the proposed project occupancy requirements; and (E) the Sponsor's ability to provide or facilitate the provision of the proposed supportive services to handicapped individuals meeting the proposed project occupancy requirements (including experience serving minority handicapped persons).

(ii) The degree to which the application meets unforeseeable housing needs, especially those brought on by natural disasters or special relocation requirements; supports minority enterprise; involves a small research or demonstration project; meets lower-income housing needs described in housing assistance plans; or provides an innovative housing program or alternative method of meeting lower income housing needs.

(2) HUD may also assign additional rating points to applications that include satisfactory evidence of control of an approvable site (see § 885.780) or, for group homes, that also propose to use acquisition with or without moderate rehabilitation as the development method. If additional points for these factors will be awarded, the announcement of funds availability under § 885.705 will include the maximum number of points that may be awarded under each factor.

(3) Within each allocation area, HUD shall rank all approvable applications in order of their rating scores.

(d) *Selection.* (1) Based on the ranking under paragraph (c) of this section, HUD shall select applications in the descending order of funding priority that most closely approximates the loan authority provided to the allocation area.

(2) If the amount of loan authority allocated to an area exceeds the amount necessary to fund all approvable applications in that area, the Department shall transfer the unused loan authority from the area to another area or areas in which there is insufficient loan authority for all approvable applications.

(3) After selection of applications that can be funded with the loan authority allocated to the allocation areas, HUD may select unfunded but otherwise approvable applications for funding from amounts in the Headquarters Reserve.

(4) Following the selection of applications, HUD will notify the Sponsors of applications that are not approvable after technical review processing under paragraph (b) of this section, and the Sponsors of applications that are not selected for funding under this paragraph (d). The notification will be in writing and will explain the reasons for HUD's action.

§ 885.755 Approval of applications.

(a) *Notice of fund reservation.* A Sponsor whose application is approved will be issued a notice of section 202 fund reservation in a format prescribed by HUD. The notice of fund reservation will specify:

(1) The number and mix of units for an independent living complex or the number of residents approved for a group home, the locality of the proposed project (or, where the Sponsor presented satisfactory evidence of control of an approvable site, the location of the site), and the project occupancy requirements approved by HUD;

(2) The amount of the section 202 fund reservation based on the development cost limit computed under § 885.810(c);

(3) The amount of annual project assistance reserved for the project equal to the sum of the operating cost standard developed under § 885.807 plus the annual debt service on the amount of the section 202 fund reservation (computed at an annual interest rate equal to the loan interest rate under § 885.810(f)(1) in effect on the date the notice is issued);

(4) The deadline for the Sponsor to return a copy of the notification to HUD with an indication of its acceptance;

(5) If the Sponsor did not submit the site information required under § 885.780 with the application or if the Sponsor submitted the site information but HUD determined that the site was not approvable, the deadline for the Sponsor to submit such information and the reasons for the rejection of any proposed site;

(6) The deadline for the Borrower to submit a request for direct loan financing and a request for determination of Borrower eligibility under § 885.800; and

(7) Other guidance to Sponsors and Borrowers (including any additional evidence required under § 885.800(b)(2)(vii)).

(b) *Withdrawal of approval.* If the Sponsor does not accept the notification by the date specified in the notice of fund reservation, HUD may notify the Sponsor that approval of the application is withdrawn.

(c) *Transfer of reservation.* Except for a transfer of loan fund reservation from the Sponsor to the HUD-approved borrower established by the Sponsor, no part of the loan fund reservation may be transferred.

(d) *Use of loan funds.* A section 202 fund reservation may be used only for the project that has been approved under the application.

(e) *Amendments.* Subject to the availability of funds, HUD may amend the amount of a fund reservation approved under paragraph (a)(1) of this section at any time before the final closing of a loan.

§ 885.770 Duration of section 202 fund reservations.

(a) *Extension and cancellation of fund reservation.* The duration of the initial fund reservation is 18 months from the date of issuance of the notice under § 885.755. Subject to the approval of the Assistant Secretary:

(1) The field office may, at any time, issue a notice of loan cancellation if the field office determines that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition.

(2) The field office shall issue a notice of loan cancellation if the construction, substantial rehabilitation, or acquisition with or without moderate rehabilitation of a project is not begun within 18 months after the notice of section 202 fund reservation under § 885.755(a) is issued. This 18-month time period may be extended if HUD determines that the Borrower is making satisfactory progress toward the start of construction, rehabilitation or acquisition with or without rehabilitation. HUD may extend this time period up to 24 months after the notice of section 202 fund reservation is issued. A fund reservation extension may affect the interest rate to be paid on the section 202 loan if the Borrower has made an election of the optional rate (see § 885.810(f)(2)(iv)).

(b) *Notification procedures.* (1) If HUD determines that a fund reservation must be cancelled under paragraph (a) of this section, the field office shall mail a notice of loan cancellation to the Borrower by certified mail, return receipt requested. The notice of loan cancellation must:

(i) Describe the reasons for the cancellation of the loan authority; and

(ii) Advise the Borrower that it may file an appeal of the cancellation with the field office within 30 days of the receipt of the cancellation notice, and that the failure to file an appeal will result in the cancellation of the fund reservation upon the expiration of the 30-day period.

(2) If the Borrower fails to file an appeal of the loan cancellation within 30 days of the receipt of the cancellation notice, the field office shall cancel the fund reservation and provide a written notice of the cancellation to the Borrower.

(3) If the Borrower files an appeal within 30 days of the receipt of the cancellation notice, HUD Headquarters will review the appeal and will issue a decision on the appeal within 45 days of the receipt of the appeal. HUD will approve the appeal if the Borrower demonstrates that it is making satisfactory progress toward the start of construction, rehabilitation, or acquisition with or without moderate rehabilitation.

(i) If HUD approves the appeal, it shall provide a written notification of the approval to the Borrower. The notification shall indicate the duration of the extended fund reservation.

(ii) If HUD disapproves the appeal, it shall notify the Borrower in writing of the determination, and cancel the fund reservation.

§ 885.775 Transition.

At any time before intitial loan closing, a Sponsor or Borrower that received a reservation of loan authority under section 202 of the Housing Act of 1959 and a reservation of contract authority for housing assistance payments under section 8 of the United States Housing Act of 1937 for a project for nonelderly handicapped families may submit a request to HUD to substitute project assistance payments under this Subpart C for the section 8 housing assistance payments. After HUD completes its selections for funding in a fiscal year and to the extent that funds are available for the substitution of project assistance, HUD may approve a request if: (a) The project is eligible for assistance under the requirements of this Subpart C; and (b) the project is financially infeasible with contract rents limited by the section 8 Fair Market Rents or the substitution would otherwise facilitate the development of the project in a timely manner

Director Loan Financing Procedures

§ 885.780 Submission of site information.

(a) *Required information.* The following information with respect to the proposed project is not required with the application, but must be provided within the time period specified in § 885.755(a)(5).

(1) Documentary evidence that the Sponsor has control of the site.

(2) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated.

(3) Evidence that the proposed acquisition, construction or rehabilitation is permissible under applicable zoning ordinances or regulations, or a description of the actions required to make the acquisition, construction or rehabilitation permissible under such laws and ordinances and the basis for the Sponsor's belief that proposed actions will be completed successfully before the receipt of commitment for direct loan financing (e.g., a summary of the results of any recent requests for rezoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

(4) A statement whether the proposed project will displace site occupants. If so, the proposal must state the number of families, individuals, and business concerns to be displaced (identified by race or minority group, and status as owners of renters); must demonstrate that relocation is feasible; and must explain how necessary relocation payments, if any, will be funded. Relocation payments may not be funded from loan proceeds.

(5) A showing that the proposal meets any special requirements or restrictions necessary for compliance with the local HAP.

(b) *HUD review of site information.* HUD will review the Sponsor's submission under paragraph (a) of this section. A site may be approved if it meets the additional site requirements described in paragraph (c) of this section below, and:

(1) The site meets the site and neighborhood standards of § 885.730.

(2) The Sponsor has demonstrated that the development of the site is permissible under applicable local zoning ordinances or regulations or will be permissible under such ordinances and regulations before the receipt of the commitment for direct loan financing;

(3) The site is suitable for its intended use;

(4) Any proposed relocation is feasible and necessary relocation payments will be funded from sources other than section 202 loan proceeds.

(c) *Additional site requirements.*—(1) *HAP consistency.* (i) When site-specific information is received for a project involving more than 12 units, HUD will forward (if not previously submitted by the Sponsor) a notification, in the form prescribed by HUD, to the chief executive officer (or such persons as that office may designate) of the unit of general local government in which the proposed housing is to be located, and shall invite a response within 30 calendar days from the date of the notification letter.

(ii) HUD will analyze the proposal and review the comments, if any, received during the response period from the appropriate unit of general local government to determine if the proposed site for the project is approvable under section 213 of the Housing and Community Development Act of 1974.

(2) *Environmental review.* HUD will complete an environmental review in compliance with the National Environmental Policy Act of 1969 and the related authorities in 24 CFR Part 50.

(3) *Flood insurance.* Assistance will not be provided for the acquisition, construction, reconstruction, repair, or improvement of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless (i)(A) the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR Parts 59–79, or (B) less than a year has passed since FEMA notification to the community regarding such hazards; and (ii) flood insurance on the structure is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(4) *Coastal barriers.* Assistance will not be provided for projects in an undeveloped coastal barrier designated under the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3601).

(d) *HUD approval.* (1) If HUD determines that a site is approvable under this section, HUD will notify the Sponsor of the approval, including a statement of any specific environmental conditions that must be met as a condition of HUD approval. The Sponsor must obtain site approval under this section before it applies for conditional commitment under § 885.800(c).

(2) If HUD determines that a site is not approvable under this section, HUD will notify the Sponsor of the disapproval and the reasons for disapproval. If a site

is disapproved, the Sponsor may, consistent with its application under § 885.710, obtain a new site and resubmit a request for site approval under this section.

§ 885.800 Request for direct loan financing.

(a) *Request for direct loan financing.* A Borrower established by a Sponsor receiving a fund reservation must submit a request for direct loan financing within the time limit specified in the notice of section 202 fund reservation to the field office serving the area in which the proposed project will be located.

(b) *Request for determination of Borrower eligibility.* Simultaneously with the request for direct loan financing, the Borrower must submit a request for determination of eligibility, on a form or forms prescribed by HUD.

(1) The Borrower will be required to submit the information required of Sponsors under §§ 885.710(b) (1), (2), (11), (12) (ii) and (iii), (13) and (16), as modified by this paragraph:

(i) Borrowers may omit the board of director's resolution required under § 885.710(b)(11), but will be required to submit certifications signed by all officers and directors of the Sponsor and the Borrower certifying that they have not had and will not have any financial interest in any contract, or in any firm or corporation that has a contract, with the Borrower in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site, or other matters whatsoever. In the case of officers and directors of the Sponsor, this certification does not apply to management contracts as described in § 885.735(a).

(ii) A Borrower will meet the requirements for a tax exemption ruling under § 885.710(b)(12)(ii) if it demonstrates that it applied for a tax exemption ruling under section 501(c) (3) or (4) before filing the request for determination of Borrower eligibility.

(2) Borrowers will be required to submit sufficient evidence to demonstrate:

(i) The Borrower is a nonprofit corporation incorporated separately from the Sponsor;

(ii) The Borrower has the necessary legal authority to finance, acquire (with or without moderate rehabilitation), construct, or substantially rehabilitate and maintain the project, and to apply for and receive the section 202 loan.

(iii) The Borrower meets all corporate organization requirements that HUD may impose, including requirements that: (A) The purposes of the Borrower include the promotion of the welfare of handicapped families; (B) the articles of incorporation and by-laws do not include any references to religion or religious purposes; (C) the articles of incorporation must provide that upon the dissolution of the Borrower, its assets remaining after payment of all debts and liabilities will be conveyed or distributed only to an organization created and operated for nonprofit purposes similar to the Borrower, other than one created for a religious purpose; and (D) the articles of incorporation must permit the Sponsor to appoint and remove a majority of the voting members of the Borrower's board of directors.

(iv) The Borrower has not engaged and is not authorized to engage in any other business or activity (including the operation of another rental property), and has not incurred and is not authorized to incur any liability or obligation not related to the project.

(v) The Sponsor has fulfilled its commitment to provide resources to the Borrower, as described in the Sponsor's application under § 885.710(b) (12)(iii) and (19).

(vi) The Borrower has submitted a request for preliminary determination of eligibility as a mortgagor, on a form prescribed by HUD.

(vii) The Borrower has submitted such additional evidence as HUD may require in the notice of section 202 fund reservation under § 885.755.

(3) If housing consultant services were used by the Sponsor, the Borrower must execute the housing consultant contract. The contract and an Identity of Interest and Disclosure Certificate signed by the housing consultant must be submitted with the request for determination of Borrower eligibility.

(c) *Conditional commitment processing.* The request for conditional commitment processing must be on a form or forms prescribed by HUD and must include all required exhibits. During conditional commitment processing, HUD will:

(1) Determine whether the Borrower has established its eligibility under paragraph (b) of this section.

(2) Establish the amount of the initial contract rents and any initial utility allowances to be provided in independent living complexes.

(i) The amount of the initial contract rent plus any utility allowances shall not exceed the annual reasonable and necessary operating costs of the project plus the debt service on the amount of the section 202 loan.

(ii) Operating cost standards developed under § 885.807 are used to evaluate the reasonableness of the operating costs of the proposed project. HUD may approve operating costs that exceed the applicable operating cost standard (including adjustments under § 885.807(a)).

(iii) If the cost of utilities (except telephone) and other housing services are not included in the initial contract rent for an independent living complex, HUD will establish initial utility allowances for the project based on the monthly cost of a reasonable consumption of utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. The cost of utilities and other housing services for group homes will be included in the initial contract rent.

(3) Review the site and project design to determine if the Borrower has presented adequate evidence of site control, and the proposed project complies with the project standards described in § 885.717, the project size limitations of § 885.720, the modest design and cost containment standards of § 885.725, and the facility prohibitions of § 885.727. To assist in this review, Borrowers will be required to submit the following information with their request for conditional commitment:

(i) A sketch of the site plan showing the general development of the site including the location of the proposed buildings, streets, parking areas and drives, service areas, and unusual site features, and architectural sketches of typical unit plans (including the square feet per unit), floor plans for typical units, floor plans showing special spaces, accommodations and common areas, and the main elevation of each building.

(ii) If the proposed housing does not comply with the cost containment and modest design standards of § 885.725 (a)–(c), evidence demonstrating that the proposed housing is eligible for an exception from these standards under § 885.725(d).

(4) Establish land value.

(5) Evaluate the overall financial feasibility of the project.

(6) Evaluate the adequacy of the Borrower's affirmative fair housing marketing plan.

(d) *Firm commitment processing.* The request for firm commitment processing must be on a form or forms prescribed by HUD and must include all required exhibits. Processing of a request for a firm commitment will include review of the final plans and specifications, review of environmental conditions to site approval, review of the contractor/

Borrower's cost estimate, and a review of the conclusions reached during conditional commitment processing. HUD will perform firm commitment processing without previous conditional commitment processing if HUD has issued architectural and engineering approval of the preliminary designs. HUD may also permit the Borrower to submit a request for firm commitment processing without previous conditional commitment processing under certain other circumstances (e.g., where the project involves an acquisition with or without moderate rehabilitation, or construction projects utilizing designs that have been previously submitted to and approved by HUD). Where single-step commitment processing is permitted, the steps set forth in paragraph (c) of this section, will be performed during firm commitment processing.

(e) *Loan interest rate.* When the request for conditional or firm commitment for direct loan financing is submitted, the Borrower may request that the loan interest rate be computed at the optional interest rate as provided under § 885.810(f)(2). If the Borrower makes such a request, the loan interest rate used for the processing of the request for conditional or firm commitment under paragraph (c) or (d) of this section shall be the optional loan interest rate. If the Borrower does not make a request for the optional rate, the interest rate used for processing the request shall be the interest rate computed under § 885.810(f)(1).

(f) *Modification of contract rents.* Contract rents proposed by a Borrower may be modified by HUD at any time before execution of the agreement to enter into a project assistance contract.

§ 885.805 Approval of requests for direct loan financing.

HUD will review the request for direct loan financing (including the request for determination of Borrower eligibility) and all required exhibits and will notify the Borrower of its approval by issuance of a conditional or firm commitment, as appropriate, or of its disapproval of the request.

(a) *Issuance of conditional commitment.* A conditional commitment will include the following:

(1) The estimated cost of the project;

(2) The land value fully improved (with offsite improvements installed) and, if the proposal involves the rehabilitation of a project, the "as is" value of the site;

(3) The detailed estimates of operating expenses;

(4) The financial requirements;

(5) The loan amount;

(6) The interest rate used in processing the request;

(7) The approved contract rents and utility allowances; and

(8) The deadline for the submission of the Borrower's request for a firm commitment for direct loan financing.

(b) *Issuance of firm commitment.* A firm commitment will include the following:

(1) Approval of the final plans and specifications;

(2) A statement that the contractor/Borrower's cost estimates have been reviewed;

(3) Reaffirmation of the conclusions reached during conditional commitment processing or a statement describing the approved changes to earlier conclusions;

(4) The interest rate used in the processing of the request.

If the Borrower was permitted to apply for a firm commitment without going through conditional commitment processing, the items listed in paragraph (a) of this section shall be included in the issuance of the firm commitment for direct loan financing. Issuance of a firm commitment evidences HUD's approval of the request for direct loan financing, and sets forth the terms and conditions upon which the loan shall be made and the loan proceeds disbursed.

(c) *Cancellation.* If a request for Borrower eligibility or a request for conditional or firm commitment for direct loan financing is not submitted within the time periods specified in the notice of section 202 fund reservation or in the conditional commitment (as appropriate), HUD may cancel the fund reservation under § 885.770.

§ 885.807 Operating cost standard.

At least annually, HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for handicapped families in each field office. The operating cost standards shall be developed for group homes based on the number of residents, and for independent living complexes based on the number of units. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance reserved for a project under § 885.755(a)(3) and to review the resonableness of operating costs for the establishment of initial contract rents at the time of issuance of the conditional commitment under § 885.800(a).

§ 885.810 Amount and terms of financing.

(a) *Amount of financing.* The amount of financing approved shall be the amount stated in the notice of fund reservation, including any increase approved by HUD before the final closing of a loan. The amount of financing may not exceed the smallest of the amounts provided in paragraphs (b) through (e) of this section.

(b) *Estimated development cost.* The amount of the loan may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost and capitalized operating costs associated with excess amenities and design features to be paid for by the Sponsor under § 885.725(d)(1).

(c) *Development cost limit.* (1) For independent living complexes, the total development cost of the property or project attributable to dwelling use (less the incremental development cost and capitalized operating costs described in paragraph (b) of this section may not exceed:

(i) For independent living complexes without elevators:

(A) $28,032 per family unit without a bedroom;

(B) $32,321 per family unit with one bedroom;

(C) $38,979 per family unit with two bedrooms;

(D) $49,893 per family unit with three bedrooms;

(E) $55,583 per family unit with four or more bedrooms.

(ii) For independent living complexes with elevators:

(A) $29,500 per family unit without a bedroom;

(B) $33,816 per family unit with one bedroom;

(C) $41,120 per family unit with two bedrooms;

(D) $53,195 per family unit with three bedrooms;

(E) $58,392 per family unit with four or more bedrooms.

(2) For group homes, the total development cost of the project (less the incremental development cost and capitalized operating costs described in paragraph (b) of this section may not exceed the cost limit for the project. HUD will periodically establish cost limits for various sizes of group homes by publishing a notice of the cost limits in the **Federal Register**. The cost limits will reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the minimum group home requirements of § 885.717(b); the accessibility requirements of § 885.717(c); cost

containment and modest design standards of § 885.725 and other design requirements applicable to group homes under this part. HUD will provide factors for adjusting the group home standard to reflect such factors as the design requirements of the specific handicapped population to be served and State and local requirements. To develop the cost limit for group homes, HUD will use commercially available construction cost indices and construction cost data for recently completed comparable group homes.

(3) Increased mortgage limits.

(i) The Assistant Secretary may increase the cost limits set forth in paragraphs (c) (1) and (2) of this section by up to 110 percent in any geographic area where the cost levels require, and may increase the cost limits by up to 140 percent on a project-by-project basis.

(ii) If the Assistant Secretary finds that high construction costs in Alaska, Guam or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the cost limits provided in this paragraph (c), the principal amount of mortgages may be increased to compensate for such costs. The increase may not exceed the limitations established under this section (including any high cost area adjustment) by more than 50 percent.

(d) *Rehabilitation projects—additional limits.* A loan that involves a project to be rehabilitated is subject to the following additional limitations:

(1) Property held in fee. If the Sponsor is the fee simple owner of a property unencumbered by a mortgage, the maximum loan amount may not exceed 100 percent of the cost of the proposed rehabilitation.

(2) Property subject to existing mortgage. If the Sponsor owns the property subject to an outstanding indebtedness that is to be refinanced with part of the section 202 loan, the maximum loan amount may not exceed the cost of rehabilitation plus the portion of the outstanding indebtedness that does not exceed the fair market value of the land and improvements before the rehabilitation, as determined by HUD.

(3) Property to be acquired. If the property is to be acquired by the Borrower from an entity other than the Sponsor, and the purchase price is to be financed with a part of the section 202 loan, the maximum loan amount may not exceed the cost of the rehabilitation plus the portion of the purchase price that does not exceed the fair market value of such land and improvements before the rehabilitation, as determined by HUD.

(e) *Leaseholds.* If a loan is secured by a leasehold estate rather than by a fee simple estate, the amount of the loan attributable to the cost of the property may not exceed the value of the leasehold estate.

(f) *Loan interest rate.* The loan is made on the date of the initial loan closing under § 885.815. Loans shall bear interest at a rate determined by HUD in accordance with this section.

(1) Annual interest rate. Except as provided under paragraph (f)(2) of this section, loans shall bear interest at the rate in effect at the time the loan is made. The loan interest rate shall not exceed:

(i) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the loan is made (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program; and

(ii) Any applicable statutory ceiling on the loan interest rate including the allowance to cover administrative costs and probable losses.

(2) Optional interest rate. The Borrower may elect an optional loan interest rate. To elect the optional rate, the Borrower must request that HUD determine the loan interest rate at the time of the Borrower's request for conditional or firm commitment for direct loan financing under § 885.800.

(i) If the Borrower elects the optional loan interest rate, the loan interest rate shall not exceed:

(A) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program;

(B) The average yield on the most recently issued 30-year marketable obligations of the United States during the one-month period immediately preceding the month in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover the administrative costs and probable losses under the program; and

(C) Any applicable statutory ceiling on the loan interest rate including an allowance to cover administrative costs and probable losses under the program.

(ii) The date of submission of a request for conditional or firm commitment is the date that the Borrower submits the complete and acceptable request to HUD under § 885.800. The date of the submission of a request for commitment will not be affected by any subsequent resubmission of the request by the Borrower or by any reprocessing of the request by HUD.

(iii) The Borrower may withdraw its election of the optional interest rate at any time before initial loan closing. If the Borrower elected the optional interest rate with its request for conditional commitment and withdraws its election, the loan will bear interest at the rate determined under paragraph (f)(1) of this section, unless the Borrower elects an optional interest rate with its request for firm commitment. If the Borrower withdraws its election after the date of submission of its request for firm commitment, the loan will bear interest at the rate determined under paragraph (f)(1) of this section.

(iv) If initial loan closing has not occurred within 18 months after the Notice of Section 202 Fund Reservation is issued, the Borrower's election of the optional rate will be cancelled and the loan will bear interest at the rate determined under paragraph (f)(1) of this section.

(3) Allowance for administrative costs and probable losses. For the purpose of computing the loan interest rate under paragraphs (f) (1) and (2) of this section, the allowance to cover administrative costs and probable losses under the program is one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods.

(g) *Announcement of interest rates.* (1) HUD will annually announce the loan interest rate determination under paragraph (f)(1) of this section by publishing notice of the rate in the **Federal Register**. The **Federal Register** notice will include a statement explaining the basis for the interest rate determination.

(2) Upon the Borrower's request, HUD will provide available current information concerning the determination of the interest rate under paragraph (f)(2) of this section.

(h) *Security for loan.* The loan will be secured by a first mortgage on real estate in fee simple or a long-term leasehold. The mortgage will be repayable during a term not to exceed 40 years and will be subject to such terms and conditions as HUD may prescribe.

(i) *Minimum capital investment.* Borrowers must provide a minimum

capital investment of one-half of one percent (0.5%) of the mortgage amount committed to be disbursed, not to exceed $10,000. Loans made under section 106 of the Housing Act of 1968 may not be used to meet the minimum capital investment requirement. The minimum capital investment will be placed in escrow at the initial closing of the section 202 loan and will be held by HUD or by a HUD-approved escrow agent. HUD or the escrow agent will hold escrowed funds for not less than three years following the date of initial occupancy. The escrow account may be used for operating expenses or deficits as may be directed by HUD. Any unexpended balance remaining in the minimum capital investment account at the end of the escrow period will be returned to the Borrower.

§ 885.812 Prepayment of loans

(a) *Prepayment prohibition.* the prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any section 202 project is prohibited, unless the Assistant Secretary gives prior written approval.

(b) *HUD-approved prepayment.* Approval for prepayment or transfer will not be granted unless HUD determines that the prepayment or transfer of the loan is a part of a transaction that will ensure the continued operation of the project until the original maturity date of the loan in a manner that will provide rental housing for the handicapped families on terms at least as advantageous to existing and future tenants as the terms required by the original section 202 loan agreement and any other loan agreements entered into under other provisions of law.

§ 885.815 Requirements prior to initial loan closing.

Before the initial loan closing, the Borrower must furnish such executed documents in such form as HUD may require, including the following:

(a) Agreement to enter into a project assistance contract.

(b) Certificate of incorporation of the Borrower as required by applicable State or local law.

(c) Internal Revenue Service Section 501(c)(3) or (4) tax exemption ruling.

(d) Certification of relationships and nonprofit motives of the Borrower.

(e) Attorney's opinion as to the legal status of the Borrower, building permit, and compliance with zoning laws and requirements.

(f) Regulatory agreement for nonprofit section 202 Borrowers

(g) Borrower's oath that the project will not be used for hotel or transient purposes.

(h) Agreement and certification to certify actual costs and as to any financial and family relationships between the Borrower, the architect, general contractor and subcontractors.

(i) Assurance of compliance with nondiscrimination and equal opportunity requirements (see § 885.740(a)).

(j) Note and first mortgage or deed of trust.

(k) A title policy insuring that the mortgage constitutes a first lien on the project.

(l) Building loan agreement setting forth the conditions for loan disbursement.

(m) Construction, moderate rehabilitation or substantial rehabilitation contract between the Borrower and the general contractor (see § 885.816 for contract award requirements).

(n) Assurance of completion of construction, moderate rehabilitation or substantial rehabilitation contract in the form of corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD-estimated construction or rehabilitation cost, or a cash escrow in the amount of 25 percent of the HUD-estimated construction or rehabilitation cost. The corporate surety bond must be issued by a surety company that is satisfactory to HUD.

(o) Escrow agreement in the amount of the cost of any off-site facilities funded by a cash deposit or letter of credit to assure completion of the facilities.

§ 885.816 Requirements for awarding construction contracts.

(a) *Construction contract award.* Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed construction contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(b) *Negotiated noncompetitive construction contracts.* Competitively bid contracts are not required. Negotiated noncompetitive contracts must be cost-reimbursement contracts with a ceiling price, and may provide an incentive payment to the contractor for early completion.

§ 885.820 Loan disbursement procedures.

(a) *General.* Disbursements of loan proceeds shall be made directly by HUD to or for the account of the Borrower and may be made through an approved lender, mortgage servicer, title insurance company, or other agent satisfactory to the Borrower and HUD.

(b) *Timing and amount of disbursement.* Disbursements to the Borrower will be made on a periodic basis, and in amounts not to exceed the HUD-approved cost of the portions of construction or rehabilitation work complete and in place (except as modified in paragraph (d) of this section), minus the appropriate holdback, as determined by HUD.

(c) *Content of disbursement requisition.* Requisitions for loan disbursements must be submitted by the Borrower on forms prescribed by HUD and must be accompanied by such additional information as HUD may require in order to approve loan disbursements under this part, including but not limited to evidence of compliance with the labor standards described at § 885.740(d), Department of Labor regulations, all zoning, building and other governmental requirements, and such evidence of continued priority of the Borrower's mortgage as HUD may prescribe.

(d) *Disbursements for building components stored off-site.* In loan disbursements for building components stored off-site, the term "building component" will mean any manufactured or pre-assembled part of a structure as defined by HUD and which HUD has designated for off-site storage because it is of such size or weight that storage of the components required for timely construction progress at the construction site is impracticable, or because weather damage or other adverse conditions prevailing at the construction site would make storage at the site impracticable or unduly costly. Each building component must be specifically identified for incorporation into the property as provided under paragraph (d)(1)(ii) of this section.

(1) *Storage.* (i) A loan disbursement may be made for up to 90 percent of the invoice value (to exclude cost of transportation and storage) of the building components stored off-site if the components are stored at a location approved by HUD.

(ii) Each building component shall be adequately marked to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which loan

disbursements have been made and separate and apart from similar units not for use in the project.

(iii) Storage costs, if any, shall be borne by the general contractor.

(2) *Responsibility for transportation, storage and insurance of off-site building components.* The general contractor of the project shall have the responsibility for (i) insuring the components in the name of the Borrower while in transit and storage; and (ii) delivering or contracting for the delivery of the components to the storage area and to the construction site, including the payment of freight.

(3) *Loan disbursements.* (i) Before a loan disbursement for a building component stored off-site is made, the Borrower shall:

(A) Obtain a bill of sale for the component;

(B) Provide HUD with a security agreement pledged by a first lien on the building components with the exception of such other liens or encumbrances as may be approved by HUD; and

(C) File a financing statement in accordance with the Uniform Commercial Code.

(ii) Before each loan disbursement for building components stored off-site is made, the manufacturer and the general contractor shall certify to HUD that the components, in their intended use, comply with HUD-approved contract plan and specifications.

(iii) Loan disbursements may be made only for components stored off-site in a quantity required to permit the uninterrupted installation on the site.

(iv) The outstanding amount of advances for building components stored off-site may not exceed 50 percent of the total estimated construction cost for the project as specified in the construction contract.

(v) Payments for building components stored off-site will not be approved unless the contractor has a corporate surety bond for payment and performance each in the amount of 100 percent of the amount of the construction contract.

(vi) No single loan disbursement shall be made in an amount less than $10,000.

§ 885.825 Completion of cost certification.

(a) *Requisition for final disbursement.* The Borrower must satisfy the requirements for completion of construction, substantial rehabilitation, or acquisition with or without moderate rehabilitation and receive all required approvals from HUD before submitting a final requisition for disbursement of loan proceeds.

(b) *Cost certification.* The Borrower shall submit to the field office all documentation required for final disbursement of the loan including the following cost certifications.

(1) If the construction contract was a cost-reimbursement contract with a ceiling price:

(i) The Borrower must certify, on a form prescribed by HUD, as to the actual cost to the Borrower of the construction contract, architectural, legal, organizational, off-site costs, and all other items of eligible expense; and

(ii) The general contractor (and such subcontractors, material suppliers, and equipment lessors as HUD may require) must certify, on a form prescribed by HUD, as to the actual cost paid for labor, materials, and subcontract work under the general contract.

The certificate shall not include as actual costs any kickbacks, rebates, trade discounts, or other similar payments to the Borrower or to any of its officers, directors, or members. For projects with a mortgage of $750,000 or more, the certifications shall be verified by an independent public accountant acceptable to the field office.

(2) If the construction contract required the contractor to furnish all labor, materials, equipment, and services required to construct and complete the project for a specified and firm price, the Borrower will be required to submit a simplified short-form cost certification on a form prescribed by HUD. For projects with a mortgage of $750,000 or more, the certifications shall be verified by an independent public accountant acceptable to the field office.

(c) *Reduction of loan amount and contract rents.* If the certified costs provided under paragraph (b) of this section and approved by HUD are less than the loan amount established under § 885.805, the loan amount and the contract rents will be reduced accordingly.

(d) *Recovery of overpayment.* If the contract rents are reduced under paragraph (c) of this section, the maximum annual commitment under the PAC will be reduced. If contract rents are reduced based on cost certifications made after PAC execution, any overpayment after the effective date of the contract will be recovered from the Borrower by HUD.

Project Assistance Contract

§ 885.900 Project assistance contract.

(a) *Project assistance contract (PAC).* The PAC sets forth rights and duties of the Borrower and HUD with respect to the project and the project assistance payments.

(b) *PAC execution.* (1) Upon satisfactory completion of the project, the Borrower and HUD shall execute the PAC on the form prescribed by HUD.

(2) The effective date of the PAC may be earlier than the date of execution, but no earlier than the date of HUD's issuance of the permission to occupy.

(3) If the project is completed in stages, the procedures of this paragraph (b) shall apply to each stage.

(c) *Project assistance payments to owners under the PAC.* The project assistance payments made under the PAC are:

(1) Payments to the Borrower to assist eligible families leasing assisted units. The amount of the project assistance payment made to the Borrower for an assisted unit (or residential space in a group home) that is leased to an eligible family is equal to the difference between the contract rent for the unit (or pro rata share of the contract rent in a group home) and the tenant rent payable by the family.

(2) Payments to the Borrower for vacant assisted units ("vacancy payments"). The amount of and conditions for vacancy payments are described in § 885.985.

The project assistance payments are made monthly by HUD upon proper requisition by the Borrower, except payments for vacancies of more than 60 days, which are made semiannually by HUD upon requisition by the Borrower.

(d) *Payment of utility reimbursement.* Where applicable, a utility reimbursement will be paid to a family occupying an assisted unit in an independent living complex as an additional project assistance payment. The PAC will provide that the Borrower will make this payment on behalf of HUD. Funds will be paid to the Borrower in trust solely for the purpose of making the additional payment. The Borrower may pay the utility reimbursement jointly to the family and the utility company, or, if the family and utility company consent, directly to the utility company.

§ 885.905 Term of PAC.

The term of the PAC shall be 20 years. If the project is completed in stages, the term of the PAC for each stage shall be 20 years. The term of the PAC for stages of a project shall not exceed 22 years.

§ 885.910 Maximum annual commitment and project account.

(a) *Maximum annual commitment.* The maximum annual amount that may be committed under the PAC is the total of the initial contract rents and utility allowances for all assisted units in the project.

(b) *Project account.* (1) HUD will establish and maintain a specifically identified and segregated project account for each project. The project account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year. HUD will make payments from this account for project assistance payments as needed to cover increases in contract rents or decreases in tenant income and other payments for cost specifically approved by the Secretary.

(2) If the HUD-approved estimate of required annual payments under the PAC for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will, within a reasonable time, take such steps authorized by section 202(h)(4)(A) of the Housing Act of 1959, as may be necessary, to assure that payments under the PAC will be adequate to cover increases in contract rents and decreases in tenant income.

§ 885.915 Leasing to eligible families.

(a) *Availability of assisted units for occupancy by eligible families.* During the term of the PAC, a Borrower shall make all units (or residential spaces in a group home) available for eligible families. For purposes of this section, making units or residential spaces available for occupancy by eligible families means that the Borrower (1) is conducting marketing in accordance with § 885.940(a); (2) has leased or is making good faith efforts to lease the units or residential spaces to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD. If the Borrower is temporarily unable to lease all units or residential spaces to eligible families, one or more units or residential spaces may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income requirements of Part 813, as modified by § 885.5. Failure on the part of the Borrower to comply with these requirements is a violation of the PAC and grounds for all available legal remedies, including an action for specific performance of the PAC, suspension or debarment from HUD programs, and reduction of the number of units (or in the case of group homes, reduction of the number of residential spaces) under the PAC as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by the PAC.* HUD may reduce the number of units (or in the case of group homes, the number of residential spaces) covered by the PAC to the number of units or residential spaces available for occupancy by eligible families if:

(1) The Borrower fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units or residential spaces to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the PAC to provide for subsequent restoration of any reduction made under paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The Borrower otherwise has a record of compliance with the Borrower's obligations under the PAC; and

(3) Contract and budget authority is available.

(d) *Occupancy by families that are not handicapped.* HUD may relieve the Borrower of the requirement that all units in the project (or residential spaces in a group home) must be leased to handicapped families if: (1) The Borrower has made reasonable efforts to lease to eligible families; (2) the Borrower has been granted HUD approval under paragraph (a) of this section; and (3) the Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the section 202 loan documents. HUD approval under this paragraph will be of limited duration. HUD may impose terms and conditions to this approval that are consistent with program objectives and necessary to protect its interest in the section 202 loan.

§ 885.920 PAC administration.

HUD is responsible for the administration of the PAC.

§ 885.925 Default by Borrower.

(a) *PAC provisions.* The PAC will provide:

(1) That if HUD determines that the Borrower is in default under the PAC, HUD will notify the Borrower of the actions required to be taken to cure the default and of the remedies to be applied by HUD including an action for specific performance under the PAC, reduction or suspension of project assistance payment and recovery of overpayments, where appropriate; and

(2) That if the Borrower fails to cure the default, HUD has the right to terminate the PAC or to take other corrective action.

(b) *Loan provisions.* Additional provisions governing default under the section 202 loan are included in the regulatory agreement and other loan documents described in § 885.215.

§ 885.930 Notice upon PAC expiration.

The PAC will provide that the Borrower will, at least 90 days before the end of the PAC contract term, notify each family occupying an assisted unit (or residential space in a group home) of any increase in the amount the family will be required to pay as rent as a result of the expiration. The notice of expiration will contain such information and will be served in such manner as HUD may prescribe.

Project Management

§ 885.940 Responsibilities of Borrower.

(a) *Marketing.* (1) The Borrower must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the group home or the anticipated date of availability of the first unit in an independent living complex. Market activities shall include the provision of notices of the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of their race, color, creed, religion, sex or national origin.

(3) At the time of PAC execution, the Borrower must submit to HUD a list of leased and unleased assisted units (or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.

(b) *Management and maintenance.* The Borrower is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for families occupying assisted units or residential spaces, collection of rents, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and

replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.

(c) *Contracting for services.* (1) With HUD approval, the Borrower may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Borrower of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationship described in § 885.735 (These prohibitions do not extend to management contracts entered into by the Borrower with the Sponsor or its non-profit affiliate).

(2) Consistent with the objectives of Executive Orders 11625, 12432 and 12138, the Borrower will promote awareness and participation of minority and women's business enterprises in contracting and procurement activities.

(d) *Submission of financial and operating statements.* The Borrower must submit to HUD:

(1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD, and

(2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the PAC and to monitor project operations.

(e) *Use of project funds.* The Borrower shall maintain a project fund account in a HUD-approved depository and shall deposit all rents, charges, income and revenues arising from project operation or ownership to this account. Project funds must be used for the operation of the project (including required insurance coverage), to make required principal and interest payments on the section 202 loan, and to make required deposits to the replacement reserve under § 885.945, in accordance with HUD-approved budget. Any remaining project funds account following the expiration of the fiscal year shall be deposited in an interest-bearing residual receipts account. Withdrawals from this account may be made only for project purposes and with the approval of HUD.

(f) *Reports.* The Borrower shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements.

§ 885.945 Replacement reserve.

(a) *Establishment of reserve.* The Borrower shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance, and repair and replacement of capital items.

(b) *Deposits to reserve.* The Borrower shall make monthly deposits to the replacement reserve. The amount of the deposits for the initial year of operation shall be an amount equal to 0.6 percent of the cost of the total structures (for new construction projects), 0.4 percent of the cost of the initial mortgage amount (for all other projects), or such higher rate as required by HUD. For the purposes of this section, total structures include main buildings, accessory buildings, garages and other buildings. The amount of the deposits will be adjusted each year by the amount of the annual adjustment factor as described in Part 888 of this chapter.

(c) *Level of reserve.* The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

(d) *Administration of reserve.* Replacement reserve funds must be deposited with HUD or in a HUD-approved depository in an interest-bearing account. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

§ 885.950 Selection and admission of tenants.

(a) *Application for admission.* The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Both the Borrower and the applicant family must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(b) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant family must be a handicapped family as defined in § 885.5, must meet any project occupancy requirements approved by HUD under § 885.755(a)(1), and must be a lower income family as defined in § 813.102, as modified under § 885.5. Under certain circumstances, HUD may permit the leasing of units (or residential space in a group home) to ineligible families under § 885.915.

(1) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Borrower's HUD-approved affirmative fair housing marketing plan. Preferences may not be based on the length of time the applicant has resided in the jurisdiction. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents.

(2) If the Borrower determines that the family is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Borrower will assign the family a unit or residential space in a group home. If the family will occupy an assisted unit the Borrower will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit (or residential space in a group home) is available, the Borrower will place the family on a waiting list for the project and notify the family when a suitable unit or residential space may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Borrower may advise the applicant that no additional applications for admission are being considered for that reason.

(3) If the Borrower determines that an applicant is ineligible for admission or the Borrower is not selecting the applicant for other reasons, the Borrower will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Borrower's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights if the applicant believes the applicant is being discriminated against on the basis of race, color, creed, religion, sex, handicap or national origin.

(4) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Reexamination of family income and composition*—(1) *Regular reexaminations.* If the family occupies an assisted unit (or residential space in a group home), the Borrower must

reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Borrower shall make appropriate adjustments in the total tenant payment in accordance with Part 813, as modified by § 885.5 and determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the project assistance payment and must carry out any unit transfer in accordance with HUD standards.

(2) *Interim reexaminations.* If the family occupies an assisted unit (or residential space in a group home) the family must comply with provisions in the lease regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent and project assistance payment must be verified.

(3) *Continuation of project assistance payment.* (i) A family occupying an assisted unit (or residential space in a group home) shall remain eligible for project assistance payment until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the family's other rights under its lease. Project assistance payment may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the PAC, the family meets the income eligibility requirements of Part 813 (as modified in § 885.5) and project assistance is available for the unit or residential space under the terms of the PAC. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (b) of this section.

(ii) A family's eligibility for project assistance payment also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

§ 885.955 Obligations of the family.

(a) *Requirements.* The family shall:

(1) Pay amounts due under the lease directly to the Borrower.

(2) Supply such certification, release, information or documentation as the Borrower or HUD determines to be necessary. (For families occupying assisted units (or residential spaces in a group home), this will include submissions required for an annual or interim reexamination of family income and composition.)

(3) Allow the Borrower to inspect the dwelling unit or residential space at reasonable times and after reasonable notice.

(4) Notify the Borrower before vacating the dwelling unit or residential space.

(5) Use the dwelling unit or residential space solely for residence by the family, and as the family's principal place of residence.

(b) *Prohibitions.* The family shall not:

(1) Assign the lease or transfer the unit or residential space.

(2) Occupy, or receive assistance for the occupancy of, a unit or residential space governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

§ 885.960 Overcrowded and underoccupied units.

If the Borrower determines that because of change in family size, an assisted unit is smaller than appropriate for the eligible family to which it is leased, or that the assisted unit is larger than appropriate, project assistance payment with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate altenate unit. If possible, the Borrower will, as promptly as possible, offer the family an appropriate alternate unit. The Borrower may receive vacancy payments for the vacated unit if the Borrower complies with the requirements of § 885.985.

§ 885.965 Lease requirements.

(a) *Term of lease.* The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the family and Borrower may execute a new lease for a term not less than one year, or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month.

(b) *Termination by the family.* All leases may contain a provision that permits the family to terminate the lease upon 30 days advance notice. A lease for a term that exceeds one year must contain such provision.

(c) *Form.* The form of lease must contain all required provisions, and none of the prohibited provisions specified in HUD handbooks. In addition to required provisions in the handbook governing the Borrower's entry onto the leased premises during tenancy, the Borrower may include a provision in the lease permitting the Borrower to enter the leased premises, at any time, without advance notice where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

§ 885.970 Termination of tenancy and modification of lease.

The provisions of Part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit (or residential space in a group home).

§ 885.972 Security deposits.

(a) *Collection of security deposit.* At the time of the initial execution of the lease, the Borrower: (1) Will require each family occupying an assisted unit (or residential space in a group home) to pay a security deposit in an amount equal to one month's total tenant payment or $50, whichever is greater; and (2) may require each family occupying an unassisted unit (or residential space in a group home) to pay a security deposit equal to one month's rent payable by the family. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Borrower may collect the security deposit on an installment basis.

(b) *Security deposit provisions applicable to assisted and unassisted units.*—(1) *Administration of security deposit.* The Borrower must place the security deposits in a segregated interest-bearing account. The Borrower shall maintain a record of the amount in this account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement under paragraph (b)(3) of this section, the Borrower shall allocate to the family's balance, the interest accrued on the balance during the year. Unless prohibited by State or local law, the Borrower may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment shall not exceed the accrued interest allocated to the family's balance for the year. The amount of the segregated, interest-bearing account maintained by the Borrower must at all times equal the total amount collected from the families then in occupancy plus any accrued interest and less allowable administrative cost adjustments. The Borrower must comply with any

applicable State and local laws concerning interest payments on security deposits.

(2) *Family notification requirement.* In order to be considered for the refund of the security deposit, a family must provide the Borrower with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Borrower, subject to State and local law and the requirements of this paragraph, may use the family's security deposit balance as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State or local law) after receiving notification under paragraph (b)(2) of this section the Borrower must:

(i) Refund to a family owing no rent or other amount under the lease the full amount of the family's security deposit balance;

(ii) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the Borrower claims is owed by the family is less than the amount of the family's security deposit balance, the Borrower must refund the excess balance to the family. If the Borrower fails to provide the list, the family will be entitled to the refund of the full amount of the family's security deposit balance.

(4) *Disagreements.* If a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the Borrower in an informal meeting. The Borrower must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of this paragraph do not preclude the family from exercising its rights under State or local law.

(5) *Decedent's interest in security deposit.* Upon the death of a member of a family, the decedent's interest, if any, in the security deposit will be governed by State or local law.

(c) *Reimbursement by HUD for assisted units.* If the family's security deposit balance is insufficient to reimburse the Borrower for any unpaid tenant rent or other amount which the family owes under the lease for an assisted unit or residential space and the Borrower has provided the family with the list required by paragraph (b)(3)(ii) of this section, the Borrower may claim reimbursement from HUD for an amount not to exceed the lesser of:

(1) The amount owed the Borrower, or

(2) One month's contract rent, minus the amount of the family's security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy. The Borrower may be eligible for vacancy payments following a vacancy in accordance with the requirements of § 885.985.

§ 885.975 Adjustment of rents.

(a) *Contract rents.* HUD will calculate contract rent adjustments based on the sum of the project's operating costs and debt service (as calculated by HUD), with adjustments for vacancies, the project's non-rental income, and other factors that HUD deems appropriate. The calculation will be made on the basis of information provided by the Borrower on a form prescribed by HUD.

(b) *Rent for unassisted units.* The rent payable by families occupying units or residential spaces that are not assisted under the PAC shall be equal to the contract rent computed under paragraph (a) of this section.

§ 885.980 Adjustment of utility allowances.

In connection with adjustments of contract rents as provided in § 885.975(a), the Borrower must submit an analysis of any utility allowances applicable in an independent living complex. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Borrower must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Borrower will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the project assistance payment.

§ 885.985 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the PAC will not be made unless the conditions for receipt of these project assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit (or residential space in a group home) that is not leased as of the effective date of the PAC, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent for a group home) for the first 60 days of vacancy, if the Borrower:

(1) Conducted marketing in accordance with § 885.940(a) and otherwise complied with § 885.940;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible family vacates an assisted unit (or residential space in a group home) the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent in a group home) for the first 60 days of vacancy if the Borrower:

(1) Certifies that it did not cause the vacancy by violating the lease, the PAC, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 885.940(a) (2) and (3) and § 885.985(b) (2) and (3); and

(4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with § 885.970.

(d) *Vacancies for longer than 60 days.* If an assisted unit (or residential space in a group home) continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, HUD may approve additional vacancy payments for 60-day periods up to a total of twelve months in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (or, in the case of group homes, the residential space). Such payments may be approved if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payment is claimed;

(2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The Borrower has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit (or residential space in a group home) and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* If the Borrower collects payments for vacancies from other sources (tenant rent, security deposits, payments under § 885.972(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

25. Appendix A is added to Part 885 to read as follows:

Appendix A—Handicapped Person or Individual

HUD adopted the definition of handicapped person or individual contained in section 202. Several commenters urged HUD to adopt the definition of handicapped person contained in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The commenters argued: (1) The section 504 definition would help the Department to avoid the overly narrow admission criteria applied in the section 202/8 program (e.g., the exclusion of mentally handicapped and developmentally disabled persons from elderly section 202 projects); (2) nothing in section 202 requires the definition of developmentally disabled person to exclude others with disabilities; and (3) the use of the section 504 definition would ensure a consistency of approach among the various agencies.

HUD's regulation implementing section 504 prohibits discrimination against qualified individuals with handicaps. While the definition of individual with handicaps is broader than the proposed definition of handicapped person or individual, the section 504 definition of "qualified individual with handicaps" recognizes that persons with handicaps may be denied benefits, such as occupancy of a dwelling unit in a HUD-assisted housing project, on the basis of failure to meet basic requirements that govern eligibility for admission, care or service. The preamble to the section 504 regulation specifically addressed commenter's arguments objecting to the exclusion of handicapped persons from elderly housing under the section 202 program. At 53 FR 20218–19, HUD stated, "For example, in a section 202 project a person is ineligible for housing for elderly persons if the person does not meet the age requirement for admission to the program." The proposed change has not been made.

HUD has consistently denied applications for projects solely for persons who are alcoholics or drug addicts. In recognition of this policy, the proposed rule stated that alcoholism and drug addiction are not included within the definition of chronic mental illness. HUD is concerned that the language of the proposed rule could be misinterpreted to permit the exclusion of individuals otherwise qualified for admission to a project, based solely on their status as alcoholics or drug addicts. A handicapped person suffering from alcoholism or drug addiction may be excluded from a project based on behavior that would exclude any other individual, even if the behavior is related to the person's drug addiction or alcoholism (e.g., the illegal sale or use of drugs).

Borrowers must make decisions on each applicant's qualifications on a case-by-case basis during the course of ordinary eligibility determinations. Because HUD believes that the language in the proposed rule might have misled some Borrowers into excluding all persons suffering from a drug addiction or from alcoholism without an examination of each individual's qualifications for the program, the language excluding alcoholism and drug addiction from the definition of chronic mental illness has been deleted. A new provision has been substituted stating that a person whose sole impairment is alcoholism or drug addiction will not be considered to be handicapped for the purposes of the section 202 program.

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

26. The authority citation for Part 912—Definition of Family and Other Related Terms; Occupancy by Single Persons, continues to read as follows:

Authority: Sec. 3, United States Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

27. The definition of disabled person in § 912.2 is revised to read as follows:

§ 912.2 Definitions.

Disabled person. A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

* * * * *

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

28. The authority citation for Part 913—Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Public Housing and Indian Housing Programs, is revised to read as follows:

Authority: Secs. 3, 6, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

29. The definition of disabled person in § 913.102 is revised to read as follows:

§ 913.102 Definitions.

* * * * *

Disabled person. A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

* * * * *

Date: June 13, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89–14435 Filed 6–19–89; 8:45 am]

BILLING CODE 4210–32

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing

Federal Housing Commissioner

[Docket No. N-89-1986; FR 2635]

Section 202 Loans for Housing for Nonelderly Handicapped Families and Individuals; Announcement of Fund Availability, Fiscal Year 1989

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability.

SUMMARY: HUD is announcing the availability of Fiscal Year 1989 loan authority under the section 202 Direct Loan Program for Housing for Nonelderly Handicapped Families and Individuals. This notice announces loan authority to be used to provide direct Federal loans for a maximum term of 40 years under section 202 of the Housing Act of 1959 to assist private, nonprofit corporations and nonprofit consumer cooperatives in the development of housing and related facilities to serve nonelderly handicapped residents. The Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988) (Fiscal Year 1989 Appropriations Act) requires that 25 percent of the direct loan authority appropriated for Fiscal Year 1989 shall be used only to provide housing for handicapped people, with priority for housing homeless chronically mentally ill people. Submission and review requirements are discussed below. Loan authority to support development of housing and related facilities to serve the elderly was announced in the Federal Register on April 17, 1989 at 54 FR 15270.

EFFECTIVE DATE: June 20, 1989.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION: Notice is hereby given under Title 24 Code of Federal Regulations Part 885, that the Department of Housing and Urban Development will be accepting Applications for Fund Reservations from eligible Sponsors (see 24 CFR 885.5 for the definition of "Sponsor" and other terms) for direct loans for the construction or substantial rehabilitation of housing and related facilities for section 202 housing for nonelderly handicapped families and individuals. Applications will also be accepted for loans for acquisition, with or without moderate rehabilitation, of housing and related facilities for use as group homes.

The Assistant Secretary for Housing is assigning a portion of Fiscal Year 1989 section 202 loan authority designated for projects for nonelderly handicapped people to the HUD Regional Offices identified below. While the precise number of units to be funded depends upon the number of approvable applications received, the following distribution plan shows the estimated numbers of units and Fiscal Year 1989 loan authority under which applications may be funded in each Regional Office jurisdiction.

FISCAL YEAR 1989 SECTION 202 HOUSING FOR HANDICAPPED PEOPLE DISTRIBUTION PLAN BY HUD REGIONAL OFFICE JURISDICTION

	Estimated No. of units	Estimated loan authority
Boston Regional Office	104	$5,733,000
New York Regional Office	201	12,282,000
Philadelphia Regional Office	238	11,082,000
Atlanta Regional Office	518	20,108,000
Chicago Regional Office	370	16,373,000
Fort Worth Regional Office	247	8,885,000
Kansas City Regional Office	108	3,796,000
Denver Regional Office	52	1,978,000
San Francisco Regional Office	232	13,208,000
Seattle Regional Office	65	2,555,000
National Total	2,135	96,000,000

The foregoing distribution plan is a guide for prospective Sponsors. It estimates the loan authority that is expected to be available in each HUD Regional Office jurisdiction. Each HUD Field Office has published an Invitation for Applications for section 202 Fund Reservation (Invitation) for its jurisdiction indicating the amount of loan authority available in the Region for housing for handicapped people and the maximum number of units this amount is expected to assist. (A separate invitation announced the amount available for housing for the elderly.)

The loan authority available in each Region will not have a specific percentage designated for use in metropolitan or nonmetropolitan areas. The emphasis of this program is primarily on the range of services provided to the handicapped residents in the projects, the opportunities for independent living and participation in normal activities, and access by the handicapped residents to the community at large and to employment opportunities. HUD believes that it is in the best interest of the program to fund the highest-ranked applications designed to meet these objectives, regardless of whether the location of the project is in a nonmetropolitan or metropolitan area. Accordingly, the program regulations do not include a nonmetropolitan allocation requirement.

In accordance with the Appropriations Act reference to providing priority for homeless chronically mentally ill people and an accompanying Congressional directive to fund 950 units for deinstitutionalized chronically mentally ill people, a proportionate share of the funds available in each Region will be designated to serve that population. For this purpose, the term "homeless chronically mentally ill people" includes deinstitutionalized persons and those who are at risk of becoming homeless.

Applications for projects to serve homeless chronically mentally ill people will compete against each other; similarly, applications for projects to serve people with all other handicaps will compete against each other. If a Region has insufficient approvable applications in either category, it may make selections from the other category.

Schedule for Section 202 Invitations, Workshops and Application Deadline

To be considered for FY 1989 funding, applications for projects for nonelderly physically handicapped, developmentally disabled or chronically mentally ill people must be submitted under this Notice of Fund Availability. Sponsors must identify proposed project occupancy requirements that limit occupancy to one or more of the eligible groups. Proposals to serve more than one occupancy group in a single project require Headquarters review for approval.

All applications for section 202 Fund Reservations must be filed with the appropriate HUD Field Office by eligible sponsors as defined in 24 CFR 885.5 and must contain all exhibits and additional information as required by the regulation at Section 885.710.

HUD Field Offices have published a one-time Invitation in newspapers of general circulation, and in minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. Applications must be received at the appropriate Field Office

by its regular closing time on July 6, 1989, unless that time is extended by Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date.

Organizations interested in applying for a Section 202 Fund Reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, advise the Field Office whether they wish to attend the workshop described in the following paragraph, and secure the Housing Notice and Application Package. HUD encourages minority organizations to participate in this program as Sponsors.

Field Offices are conducting workshops to explain the Section 202 program and the Seed Money Loan program under Section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit Section 202 eligible Borrowers to cover certain pre-construction expenses. At the workshops, Application Packages will be distributed, application procedures and requirements (including the Department's equal opportunity, design and cost containment guidance and required exhibits) will be discussed, and concerns such as local market conditions, building codes, zoning and housing costs will be addressed. HUD strongly recommends that prospective Sponsors attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops are provided in the Field Office Invitation. Interested disabled persons should contact the Field Office to assure that any necessary arrangements can be made for them to be able to attend and participate in the workshop.

Additional Information

(1) Elsewhere in today's **Federal Register**, HUD has published a final rule implementing Section 162 of the Housing and Community Development Act of 1987. This section amended Section 202 of the Housing Act of 1959 as it applies to development of housing for nonelderly handicapped people. The Fiscal Year 1989 funding selections will be governed by the new regulation, codified at 24 CFR Part 885, Subpart C.

(2) Because of the concern expressed by Congress for homeless chronically mentally ill people, Sponsors serving primarily this population are encouraged to submit applications under this NOFA.

(3) In evaluating applications for Section 202 Fund Reservations for housing for handicapped residents, only those proposals that meet certain threshold scores on the standard ranking format will be considered for funding. However, Headquarters may waive the threshold score in order to fund proposals to the extent necessary to meet the requirement that not less than 25 percent of the loan authority be reserved for applications for housing for nonelderly people with handicaps and to fulfill the goal of 950 units for homeless or deinstitutionalized chronically mentally ill people. The threshold requirement will be included in the Section 202 Application Package available at the local HUD Field Office. The Section 202 workshops will include discussions of this and other application requirements.

(4) Applications that meet the following optional criteria will be eligible for additional points on the standard ranking format:

(a) Applications that include evidence of control of an approvable site under § 885.780 will be awarded up to 10 points.

(b) Applications receiving points for site control and which propose to use acquisition with or without moderate rehabilitation will receive up to five additional points.

(5) HUD unit limits for housing for nonelderly handicapped people (other than the chronically mentally ill) permit group homes to serve up to 15 persons on one site, and independent living complexes to include up to 24 units serving no more than 24 households on one site. For purposes of this requirement, a household is a family or any individual. Two unrelated individuals sharing a two bedroom unit will be counted as two households in calculating the 24 household limit. Independent living complexes comprised of three or more bedroom units may be developed only to serve one or two parents or guardians with children; these complexes may not be developed to serve large numbers of single unrelated persons.

(6) Projects designed exclusively for chronically mentally ill people are eligible under the same conditions and criteria as other projects designed solely for nonelderly handicapped people, except that only group homes for up to 15 persons and independent living complexes to serve up to 20 persons may be proposed for the chronically mentally ill.

(7) To be responsive to the Invitation, an application must not request more units in a given Region than advertised for that Region in the Invitation. Applications exceeding these limits will be rejected.

(8) Sponsors will be required to complete a Service Plan Description, describing how their proposed projects will be linked to supportive services needed to maintain their handicapped residents in the community. Since funds for such services cannot be provided from the rental assistance subsidy, evidence of other funding sources must be provided, with assurances that the funds will be secured by the time the project is ready for occupancy and will continue to be available for a reasonable time thereafter. Sponsors are advised that if at any time these supporting funds are not available, the project will have to be converted to occupancy by handicapped persons or families capable of living independently without the supportive services. To assist HUD in evaluating the Sponsor's capabilities with regard to supportive services for the residents of group homes or independent living complexes, HUD will invite a representative from the State Mental Health Agency (SMHA), the State Rehabilitation Agency, or the State Administrative Agency for Developmental Disabilities, as appropriate, to evalaute and make recommendations about the Service Plan Description. To this end, prospective Sponsors may be required to submit a copy of the Application to the appropriate State Agency. The HUD Field Office will advise prospective Sponsors of further details in this regard. Since the review and evaluation is at the option of the State Agency, HUD will conduct its own independent review for those States that do not wish to participate.

(9) Section 202 loans may be used for the acquisition of existing housing and related facilities, with or without moderate rehabilitation ("acquisition") for group homes for the nonelderly handicapped. Proposals involving housing units already owned and operated by the Sponsor as group homes for handicapped residents at the time Applications are submitted (often referred to as "refinancing") are not eligible for acquisition or rehabilitation under the Section 202 program.

(10) Where the proposed project site is being optioned or acquired from a general contractor or its affiliate, the Section 202 Borrower will be prohibited from selecting that contractor to construct the project for which an Application for funding is being made. Further, the proposed contractor may not be the attorney, architect, housing consultant or management agent for the project. This prohibition extends to any firm or subsidiary having an identity-of-interest with the contractor.

(11) Religious bodies may serve as project Sponsors, but must establish a

Borrower corporation as a separate legal entity to be the owner, prior to the submission of a loan commitment application. When the Borrower corporation is created, no reference to religion or religious purposes may be included in the Articles of Incorporation or By-Laws of that corporation. The mere recital on a Borrower's Articles of Incorporation that it is organized exclusively for religious, charitable, scientific, literary or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code will not by itself make a Borrower ineligible. However, the dissolution clause must provide that, upon dissolution or winding up of the corporation, its assets remaining after payment of all debts and liabilities shall be distributed to a nonprofit fund, foundation or corporation, other than one created for a religious purpose, which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(12) Sponsors, including churches, must have a current IRS nonprofit tax exemption ruling.

(13) Because of the nonprofit nature of the Section 202 program, no officer or director of the Sponsor or Borrower, or trustee, member, stockholder or authorized representative of the Borrower is permitted to have any financial interest in any contract in connection with the provision of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever, except that this prohibition does not apply to management contracts (or management fees associated therewith) entered into by the Borrower with the Sponsor or its nonprofit affiliate.

(14) 24 CFR 885.810(i) contains a minimum capital investment requirement. This requirement applies to all Section 202 projects receiving fund reservations in Fiscal Year 1989. The minimum capital investment is currently established at one-half of 1 percent (0.5%) of the total HUD-approved mortgage amount, not to exceed $10,000. Section 106(b) Seed Money Loan Funds, under 24 CFR Part 271, may not be used to satisfy the minimum capital investment requirement.

(15) Applications missing two or more exhibits will be rejected. If Applications are found to have incomplete exhibits, the Sponsor will be advised in writing of the deficiencies and that missing documents will be accepted on or before a specified date. Further, all necessary actions (*e.g.*, adoption of corporate resolutions) must have been taken on or before the deadline date for filing applications. Sponsors may be contacted if clarification of any part of the application is needed in order to evalaute the application.

(16) HUD will make contract and budget authority under Section 202(h)(4) of the Housing Act of 1959 available for successful Sponsors, subject to the availability of funds.

(17) A notice of approval will be sent to the Sponsors selected in accordance with the requirements of 24 CFR 885.750 (Review of Application for Fund Reservation) and on the basis of information furnished by the Sponsors as set forth in the Field Office Application Package.

(18) To the extent that funds are available to fund new projects for handicapped people from the Headquarters Reserve (which Reserve shall constitute no more than 15 percent of the Section 202 Fiscal Year 1989 loan authority designated for projects for handicapped people), applications which are otherwise approvable but not funded by the Regional Offices from the field allocation may be considered for Headquarters funding on the basis of support for the needs of the handicapped, one of the conditions set forth in Section 213(d)(4) of the Housing and Community Development Act of 1974.

(19) Sponsors are invited to submit applications for Section 202 Fund Reservations for housing for nonelderly handicapped persons in accordance with this Notice and with 24 CFR Part 885.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours (7:30 a.m. to 5:30 p.m. weekdays) in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–220), the information collection requirements contained in these Section 202 application requirements have been assigned OMB control number 2502–0267.

The General Counsel, as the Disignated Official under Executive Order No. 12606—The Family, has determined that the notice will not have a significant impact on family formation, maintenance or well being.

The General Counsel, as the Deisgnated Official under setion 6(a) of Executive Order No. 12611—Federalism, has determined that the notice does not involve the preemption of State law by Federal statute or regulation and does not have federalism impacts.

The Catalog of Federal Domestic Assistance Program number and title is 14.157, Housing for the Elderly or Handicapped.

(Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q as amended by Sec. 162, Housing and Community Development Act of 1987 (Pub. L. 100–242, Feb. 5, 1988)), Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 9, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89–14434 Filed 6–19–89; 8:45 am]

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federal register

Tuesday
June 20, 1989

Part IV

Department of Education

34 CFR Part 654

Robert C. Byrd Honors Scholarship Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 654

RIN 1840-AB06

Robert C. Byrd Honors Scholarship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations to govern the actions of State educational agencies (SEAs) in their administration of the Robert C. Byrd Honors Scholarship Program (the Byrd Scholarship Program), authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). These regulations specify the role of the Secretary and the responsibilities of the SEAs in the administration of the program and also describe the responsibilities of the scholarship recipients.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Fred Sellers or Stephen Wingard, Office of Postsecondary Education, U.S. Department of Education (Room 4018, ROB-3), 400 Maryland Avenue, SW., Washington, DC 20202-5447. Telephone (202) 732-4507.

SUPPLEMENTARY INFORMATION: The Byrd Scholarship Program is a federally funded program authorized under Title IV, Part A, Subpart 6 of the HEA. The purpose of the program is to promote student excellence and achievement and to recognize exceptionally able students who show promise of continued academic achievement. Nonrenewable scholarships of $1,500 are awarded to students on the basis of merit for the first year of study at an institution of higher education.

Byrd Scholarships were awarded for the first time in the spring of 1987, for study in academic year 1987-88. Because the Secretary has not previously issued specific regulations for this program, administration of the program to date has been governed by the General Education Provisions Act, Education Department General Administrative Regulations (EDGAR), applicable provisions of the program statute, and notices of final procedures published in the **Federal Register**. The publication of notices of final procedures was necessitated in fiscal years 1987 and 1988, and again in the current fiscal year, due to language in the Department's appropriation acts for those years which superseded certain provisions of the Byrd statute. Barring the enactment of superseding appropriations language in future years, the issuance of these regulations is intended to remove the need for annual notices of final procedures, by providing permanent guidance to States in their administration of the program.

On September 30, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for the Robert C. Byrd Honors Scholarship Program in the **Federal Register** (53 FR 38660).

Changes Resulting From Public Comment

In addition to a number of editorial and technical revisions which have been made to these final regulations as a result of the comments received on the NPRM and as discussed in detail in the Analysis of Comments and Changes section which follows, the Secretary has also made the following significant changes:

1. The term "calendar year" in §§ 654.10(b)(3)(v) and 654.41(a)(1) has been replaced with the term "secondary academic year." The specific time frames which are to be associated with the term "secondary academic year" shall be determined by each SEA. (The term "secondary academic year" is to be distinguished from the term "academic year" which refers to the postsecondary academic year and is defined in § 654.5.)

2. The heading in § 654.2 has been changed to read, "Who is eligible to apply for an award?" This change and a concomitant change to § 654.2(b) were made in order to clarify that those students who have applied to an institution of higher education are eligible to apply for a Byrd Scholarship even if they have not yet been accepted for enrollment by an institution of higher education.

3. Section 654.41(b)(2) was added to provide that a Byrd Scholar may, without forfeiting his or her scholarship award, postpone enrollment in an institution of higher education for up to one year after receipt of the scholarship award, in accordance with such program guidelines and standards as each SEA may establish.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, nine parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues are discussed under the section of the regulations to which they pertain.

Section 654.2 Who is eligible to apply for an award?

Comment: One commenter requested that the Secretary change § 654.2(b) of the NPRM to permit secondary school students who have not yet been accepted for enrollment at institutions of higher education to apply for Byrd Scholarships. The commenter requested this change because he stated that applicants do not receive acceptances from most colleges and universities until April, and it would be very late for students to begin the application process for the Byrd Scholarship in April.

Discussion: Although section 419F(a) of the HEA requires that a student be accepted for enrollment to be awarded a Scholarship, there is no statutory requirement that a student be accepted for enrollment in order to apply for a Byrd Scholarship. If an applicant applies for and subsequently does not accept the Scholarship or subsequently is not accepted for enrollment in an institution of higher education, then the SEA must award the Scholarship to another applicant from a list of alternates. The Secretary agrees that a change is necessary to clarify the purpose of the section, which is to state the requirements that must be met by students who wish to apply for an award under the Robert C. Byrd Honors Scholarship Program.

Changes: The Secretary has changed the title of § 654.2 to read, "Who is eligible to apply for an award?". The Secretary has also changed § 654.2(b) to allow a secondary school graduate who has applied but has not yet been accepted for enrollment at an institution of higher education to apply for a Byrd Scholarship. The change does not make the student eligible to receive the scholarship prior to acceptance for enrollment at an institution of higher education. (See the first comment and discussion regarding § 654.41 for a discussion of another commenter's related concern about a student's eligibility to apply for a Scholarship.)

Section 654.10 What must a State do to receive a grant under this program?

Comment: Five commenters requested that the Secretary make the awards ceremony required in § 654.10(b)(2)(v) and § 654.50(a)(4) optional or permit the ceremony to be at the discretion of the SEA. One of the commenters stated that he conducted an elaborate awards ceremony for the 1987 Byrd Scholars

and invited the entire Congressional delegation to the event. Only one member of the House of Representatives was able to appear. Several other commenters also stated that a single ceremony was very difficult to schedule with the complex schedules of the Members of Congress and logistically difficult for States to administer. The commenters also mentioned that for the first two years of the program, and now for the third year, language in the ED appropriations legislation has eliminated the statutory requirement for an awards ceremony.

Discussion: Section 654.50(a)(4) instructs SEAs to "make arrangements, *to the extent possible,* to have awards presented to the scholars during a ceremony at a convenient location * * *" (emphasis added). Thus, this section already affords SEAs discretion in choosing the type and location of their award ceremonies, and the Secretary finds there is no need to change the section. In accordance with § 654.50(a)(4), the Secretary encourages SEAs to invite the appropriate Congressional representatives to participate in any ceremony that is held pursuant to this section. As an alternative to holding a formal awards ceremony, the Secretary encourages SEAs to provide Members of the Senate and House of Representatives with lists of the Byrd Scholars from their districts along with the suggestion that they acknowledge formally the scholars' accomplishments, either in a letter to the scholar or by other means available to the Members.

Changes: None.

Section 654.40 What are the selection criteria and procedures?

Comment: One commenter asked what happens to the funds if fewer than ten applications are received from a Congressional district. He also asked if the excess funds could be awarded to applicants from other Congressional districts.

Discussion: Section 654.40(b)(1) requires each SEA to select ten scholars from among the residents of each Congressional district of the State for each award period. This regulatory requirement implements the statutory requirement that is in section 419G(b) of the program statute and cannot be changed absent an amendment to the statute. If the SEA receives fewer than ten applications from eligible students in a particular Congressional district, the Secretary suggests that it contact the secondary schools in that Congressional district to encourage the submission of additional applications. As a practical matter, however, the Secretary considers it highly unlikely that an SEA would receive fewer than ten eligible applications from each Congressional district.

In any event, for fiscal years 1987, 1988, and 1989 section 419G(b) has been superseded by language in the Department of Education appropriations acts for those fiscal years. Thus, for fiscal year 1989 (as in the past two fiscal years) grantees are not required to comply with § 654.40(b)(1) on the application process, but rather with the provisions of the notice of final procedures published in the Federal Register on March 27, 1989 (54 FR 12549).

Changes: None.

Comment: One commenter requested that § 654.40(b)(2) and all other appropriate sections include a prohibition against the awarding of scholarships solely on the basis of college admissions test scores. The commenter considered college admissions tests to be biased on the basis of race, gender, and socioeconomic status, and was of the opinion that for this reason SEAs should not be permitted to use them to award scholarships. The commenter recommended the use of high school grades as a selection criterion, because the commenter believed that they are a better predictor of college performance than college admissions test scores.

Discussion: The program statute does not specify which selection criteria SEAs must use in determining the selection of Byrd Scholars. Rather, section 419G(a) authorizes SEAs to "* * * establish the criteria for the selection of scholars. * * *" Therefore, the Secretary cannot prohibit SEAs from considering college admissions test results as one of their criteria. However, the SEAs are required, under § 654.40(b)(2), to select the scholars on the basis of outstanding academic achievement prior to their graduation from high school as well as on the basis of the promise of continued academic achievement. The Secretary considers it unlikely that an SEA could use a "college admissions test" as the sole criterion in scholar selection without bringing into question the SEA's compliance with the requirements of § 654.40(b)(2). The SEA would have to be able to show that the test had been designed to test prior academic achievement and not just to predict college performance. The Secretary encourages all SEAs that use college admissions test scores as a selection criterion to use other criteria as well, so as to ensure generally that SEAs award scholarships to the most qualified scholars.

Changes: None.

Comment: Two commenters were concerned about § 654.40(b)(2)(ii) which requires the SEA to select scholars without regard to whether the secondary schools they attend are within or outside their Congressional districts or States of residency. One commenter had previously interpreted the statute to require scholars to be graduating or have graduated from a secondary school within the State to which the scholar makes application for a Byrd Scholarship. An additional concern was that this requirement would add confusion to the program by requiring the SEA to have proof of residency from parents when applicants are nominated by out-of-State secondary schools.

Discussion: Section 419G(b) of the program statute requires SEAs to select scholars from "among residents of each congressional district in a State. * * *" Sections 654.40(b)(1) and 654.40(b)(2)(ii) maintain the statutory emphasis on the district or State of a student's residency. Doing otherwise would render students ineligible for Byrd scholarships in their State simply because they attend out-of-State schools, such as Department of Defense overseas schools or out-of-State boarding schools. The Secretary can find nothing in the statute or in the legislative history to support such a result. Under these regulations, a student who is attending a secondary school outside his or her State of residency applies for a Byrd Scholarship through the SEA of his or her State of residency and is counted in the appropriate Congressional district as indicated by his or her residency documentation.

Changes: None.

Section 654.41 What are the requirements for a student to receive assistance under this program?

Comment: One commenter expressed concern with proposed § 654.41(a)(1) which requires a scholar to graduate from a secondary school or to receive a recognized equivalent of a high school diploma in the same calendar year in which the SEA awards the Byrd Scholarship. The commenter was concerned that students who receive a recognized equivalent of a high school diploma before the beginning of the "calendar year" would be denied the opportunity to apply for the scholarship. The commenter recommended that the section be modified to allow applications from students who receive a recognized equivalent of a high school diploma within six months preceding the start of the calendar year in which scholarships are to be awarded.

Discussion: The Secretary agrees that the use of "calendar year" would deny this type of student the opportunity to apply for the scholarship, and that such denial is not in keeping with the intent of the program.

Changes: The Secretary has revised § 654.41(a)(1) to replace the term "calendar year" with the statutory term "secondary academic year," found in section 419I(b) of the program statute. The specific time frame associated with the secondary academic year in each State shall be determined by each State. (Note: the term "secondary academic year" is to be distinguished from the term "academic year," which is the postsecondary academic year as defined in § 654.5.)

Comment: A commenter was concerned that § 654.41(a)(1)(ii) requires a student to graduate from secondary school and enter an institution of higher education during the same calendar year. The commenter requested a modification that would permit a Byrd Scholar some options in enrollment in higher education. In the commenter's opinion, this section would reduce the range of options, such as foreign exchange programs that would postpone college enrollment by one year, that some outstanding students want to pursue. The commenter stated that in the first year of the Byrd Scholarship Program a recipient from his State had to postpone enrollment in an institution of higher education until the second semester due to an operation. He believed that the scholar would have been unable to receive the scholarship if the proposed regulations were in effect at that time.

Discussion: Section 654.41(a)(1)(ii) of the NPRM requires only that a scholar be accepted for enrollment at an institution of higher education during the same secondary academic year (referred to as "calendar year" in the NPRM) as the scholarship is to be awarded. Thus, in response to the commenter's concern, the Secretary does not interpret either the statute or § 654.41(a)(1)(ii) of the NPRM as requiring enrollment during the same year as the scholarship is awarded. Rather, the Secretary considers a delay of enrollment for up to one year, as is suggested by the commenter, to be authorized under the statute although he would consider any delay lasting more than one year to be inconsistent with the purpose of the program.

Changes: The Secretary has renumbered § 654.41(b) so that it is now § 654.41(b)(1) and has added § 654.41(b)(2) to provide that a scholar may postpone enrollment in an institution of higher education for up to one year after receipt of a Byrd Scholarship award. However, the new § 654.41(b)(2) also authorizes an SEA to develop and apply program guidelines and standards to the review of any scholar's request for a postponement of enrollment, in accordance with the program administration authority provided to the SEA by section 419E(1) of the Byrd Scholarship Program statute.

Comment: One commenter requested that an SEA collect the Statement of Registration Status required in § 654.41(a)(4). The commenter believed that this procedure is proper since the SEA makes the award to qualified recipients prior to their actual enrollment in a postsecondary institution.

Discussion: The requirement that recipients of aid under Title IV of the HEA who are required to register with Selective Service file a Statement of Registration Status with the postsecondary institution which they plan to attend (rather than the SEA as suggested by the commenter) is statutory (see 50 U.S.C. App. 462) and the Secretary cannot change the requirement.

Changes: None.

Section 654.50 What requirements must a State meet in the administration of this program?

Comment: One commenter expressed concern that § 654.50(a)(4) and § 654.50(a)(5) in combination with the requirements in § 654.41 would delay the awards ceremony and the disbursement of funds until after the student has begun his or her initial term in postsecondary education. The commenter was further concerned that § 654.50(a)(7) would delay the disbursement of funds until the institution of higher education has certified all requirements in § 654.41.

Discussion: There is no requirement that the Statement of Registration Status must be filed prior to the SEA's awarding of the scholarships during an awards ceremony. Under § 654.50(a)(5), the SEA may decide for itself when to disburse the funds. The fact that neither the Statement of Registration Status nor the confirmation of enrollment is obtained before the actual enrollment of a scholar in a postsecondary institution need not delay the award of the scholarship. The Secretary interprets section 419I(b) of the program statute to require each SEA to make each award before the last date on which any secondary school in the State completes its secondary academic year. However, these regulations do not require the SEA to disburse the awards at that time. Under § 654.50(a)(5), each SEA may hold the funds until after the awards ceremony and following confirmation that the student has met the requirements in § 654.41. Although, § 654.50(a)(5) permits an SEA to delay the disbursement of funds until after it has confirmed that the scholar has met the requirements of § 654.41, it does not require the SEA to do so. If the SEA chooses to disburse the scholarship funds at the awards ceremony, as it is also authorized to do under § 654.50(a)(5), it is then required, under § 654.50(a)(7), to collect any funds disbursed to students who fail to meet the requirements of § 654.41.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the responses to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 654

Education, grant programs, Education, State-administered Education, student aid.

Dated: May 25, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.185—Robert C. Byrd Honors Scholarship Program)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 654, to read as follows:

PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

654.1 What is the Robert C. Byrd Honors Scholarship Program?
654.2 Who is eligible to apply for an award?
654.3 What kinds of activities does the Robert C. Byrd Honors Scholarship Program assist?

Sec.

654.4 What regulations apply?
654.5 What definitions apply to the Robert C. Byrd Honors Scholarship Program?

Subpart B—How Does a State Apply for a Grant?

654.10 What must a State do to receive a grant under this program?

Subpart C—How Does the Secretary Make a Grant to an SEA?

654.20 How Does the Secretary allot funds to an SEA?

Subpart D—How Does an Individual Apply to an SEA for a Scholarship?

654.30 How does an individual apply for a scholarship?

Subpart E—How Does an SEA Award a Scholarship to an Applicant?

654.40 What are the selection criteria and procedures?
654.41 What are the requirements for a student to receive assistance under this program?

Subpart F—What Postaward Conditions Must an SEA Meet?

654.50 What requirements must an SEA meet in the administration of this program?

Authority: 20 U.S.C. 1070d–31 to 1070d–41, unless otherwise noted.

Subpart A—General

§ 654.1 What is the Robert C. Byrd Honors Scholarship Program?

(a) Under the Robert C. Byrd Honors Scholarship Program, the Secretary makes available, through grants to the States, scholarships to exceptionally able students for study at institutions of higher education in order to recognize and promote student excellence and achievement.

(b) This program is known as the "Byrd Scholarship Program" and scholarship recipients are known as "Byrd Scholars."

(Authority: 20 U.S.C. 1070d–31, 1070d–33)

§ 654.2 Who is eligible to apply for an award?

(a) States are eligible to apply for grants under this program.

(b) Outstanding high school graduates who have been accepted or have applied for enrollment at institutions of higher education are eligible to apply to their respective States of residence for scholarships under this program.

(Authority: 20 U.S.C. 1070d–33)

§ 654.3 What kinds of activities does the Robert C. Byrd Scholarship Program assist?

(a) An SEA may use its allotment under § 654.20(a) only for making payments to scholars.

(b) An SEA may use its allotment under § 654.20(b) for covering costs incurred in administering the program, as determined in accordance with 34 CFR Part 80, or for making payments to scholars.

(Authority: 20 U.S.C. 1070d–35, 1070d–38)

§ 654.4 What regulations apply?

The following regulations apply to the Robert C. Byrd Honors Scholarship Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 654.

(Authority: 20 U.S.C. 1070d–31 *et seq.*)

§ 654.5 What definitions apply to the Robert C. Byrd Honors Scholarship Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 419B of the Act:

Secondary school
State

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

EDGAR
Secretary
State educational agency (SEA)

(c) *Other definitions.* The following definitions also apply to this part:

With respect to the postsecondary academic year, "academic year" means—

(1) A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

"Act" means the Higher Education Act of 1965, as amended.

"Award period" means the period of time from April 1 of one year through March 31 of the following year.

"Institution of higher education" means any public or private nonprofit institution of higher education as defined in 34 CFR 600.4 of the Institutional Eligibility regulations.

"Recognized equivalent of a high school diploma" means—

(1) A General Education Development (GED) Certificate; or

(2) A State certificate received by a student after the student has passed a State authorized examination that the State recognizes as the equivalent of a high school diploma.

"Scholar" means a Byrd Scholarship recipient.

"Scholarship" means an award made to an individual under this part.

(Authority: 20 U.S.C. 1070d–31 to 1070d–41)

Subpart B—How Does a State Apply for a Grant?

§ 654.10 What must a State do to receive a grant under this program?

(a) To receive a grant under the Byrd Scholarship Program, a State shall submit a participation agreement to the Secretary for review and approval.

(b) The Secretary approves a participation agreement if the agreement—

(1) Provides that the State, through its SEA, agrees to administer the Byrd Scholarship Program in accordance with the requirements in this part;

(2) Describes the criteria and procedures that the SEA uses in the selection of scholars in sufficient detail for the Secretary to determine the degree to which they satisfy the provisions of this part; and

(3) Provides assurances that—

(i) The SEA will make no changes in the criteria and procedures to be used in the selection of scholars without the prior written approval of the Secretary;

(ii) Each student receiving a Byrd Scholarship will meet the eligibility requirements described in § 654.41;

(iii) The SEA will select scholars solely on the basis of criteria and procedures established in accordance with the provisions of § 654.40;

(iv) The SEA will conduct outreach activities to publicize the availability of Byrd Scholarships to all seniors attending secondary schools in the State, with particular emphasis on activities designed to ensure that students from low-income and moderate-income families know about their opportunity for full participation in the program;

(v) The SEA will issue an award for $1,500 to each Byrd Scholar during an awards ceremony to be held before the latest date on which any secondary

school in the State completes its secondary academic year; and

(vi) The SEA will expend the amount of Federal funds allotted to it for this program only as described in § 654.3.

(c) Upon the Secretary's approval of its agreement, an SEA need not submit additional agreements in order to be considered for funding under this program in subsequent years.

(Approved by the Office of Management and Budget under control number 1840-0612)

(Authority: 20 U.S.C. 1070d-33, 1070d-35 to 1070d-39)

Subpart C—How Does the Secretary Make a Grant to an SEA?

§ 654.20 How does the Secretary allot funds to an SEA?

From the funds appropriated for the Byrd Scholarship Program, the Secretary allots to each SEA having an approved participation agreement under § 654.10—

(a) $1,500 multiplied by the number of scholars the SEA may select under § 654.40(b)(1); and

(b) $10,000 plus 5 percent of the amount for which the SEA is eligible under paragraph (a) of this section.

(Authority: 20 U.S.C. 1070d-34)

Subpart D—How Does an Individual Apply to an SEA for a Scholarship?

§ 654.30 How does an individual apply for a scholarship?

To apply for a scholarship, an individual shall follow the application procedures established by the SEA in the State in which the individual resides.

(Authority: 20 U.S.C. 1070d-33, 1070d-35)

Subpart E—How Does an SEA Award a Scholarship to an Applicant?

§ 654.40 What are the selection criteria and procedures?

(a) The SEA shall establish criteria and procedures for the selection of scholars after consultation with school administrators, school boards, teachers, counselors, and parents.

(b) The SEA shall design the selection criteria and procedures to ensure that it—

(1) Selects ten scholars from among the residents of each Congressional district of the State for each award period for which funds are received, with the exception of the District of Columbia and the Commonwealth of Puerto Rico, which shall each establish procedures for the selection of 10 scholars from among its respective resident students for each year for which funds are received;

(2) Selects scholars solely on the basis of demonstrated outstanding academic achievement, promise of continued achievement; and the geographic consideration described in paragraph (b)(1) of this section, and—

(3) Selects scholars—

(i) Without regard to whether the secondary schools they attend are within or outside the scholars' Congressional districts or States of residency;

(ii) Without regard to whether the institutions of higher education they plan to attend are public or private or are within or outside the scholars' Congressional districts or States of residency;

(iii) Without regard to sex, race, handicapping condition, creed, or economic background; and

(iv) Without regard to their educational expenses or financial need.

(Authority: 20 U.S.C. 1070d-33, 1070d-35 to 1070d-37)

§ 654.41 What are the requirements for a student to receive assistance under this program?

(a) To receive scholarship assistance, a student must—

(1) During the same secondary academic year in which the scholarship is to be awarded—

(i) Graduate from a secondary school, or receive a recognized equivalent of a high school diploma; and

(ii) Be accepted for enrollment at an institution of higher education;

(2) Be a resident of the State to which he or she is applying for a scholarship;

(3)(i) Be a U.S. citizen or national; or

(ii) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(4) File with the institution he or she plans to attend or is attending, a Statement of Selective Service Registration Status if required by the institution in accordance with the provisions of 34 CFR Part 668 of the Student Assistance General Provisions regulations; and

(5) Pursue a course of study at an institution of higher education, as described in paragraph (b) of this section.

(b)(1) For purposes of paragraph (a)(5) of this section, a scholar is deemed to be pursuing a course of study if he or she is enrolled at an institution of higher education as at least a half-time student, as determined by the institution he or she is attending under standards applicable to all students enrolled in that scholar's course of study.

(2) In accordance with such guidelines and standards as may be established by an SEA, a scholar who has been accepted for enrollment at an institution of higher education may, without forfeiting his or her scholarship, postpone his or her enrollment at the institution of higher education for up to a period of one year beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded him or her the scholarship.

(Authority: 20 U.S.C. 1070d-36 to 1070d-38, 50 U.S.C. App 462)

Subpart F—What Postaward Conditions Must an SEA Meet?

§ 654.50 What requirement must an SEA meet in the administration of this program?

(a) To continue to receive payments under this part, an SEA shall—

(1) Provide scholarship assistance only to students who meet the requirements in § 654.41;

(2) Select scholars in accordance with the provisions in § 654.40;

(3) Award to each scholar only one scholarship in the amount of $1,500 to be used for the first academic year of study at an institution of higher education;

(4) Make arrangments, to the extent possible, to have scholarship awards presented to the scholars during a ceremony at a convenient location by Members of the Senate and Members of the House of Representatives who represent the State (or by the Delegate in the case of the District of Columbia or the Resident Commissioner in the case of the Commonwealth of Puerto Rico);

(5) Disburse the scholarship proceeds, in the form of a warrant, voucher, or check payable to the student or copayable to the student and an official of the institution of higher education in which the student enrolls, during the awards ceremony or after confirming that the scholar has met the requirements described in § 654.41;

(6) Make no adjustments to the student's award because of the student's educational expenses or financial need;

(7) Collect any scholarship funds disbursed to a student who fails to meet the requirements of § 654.41;

(8) Make reports to the Secretary that are necessary to carry out the Secretary's functions under this part; and

(9) Except as provided in paragraph (b) of this section, expend all funds received from the Secretary for scholarships during the award period

specified by the Secretary with regard to those funds.

(b)(1) After awarding all scholarships during an award period, as required by paragraph (a)(9) of this section, an SEA may reserve for scholarship expenditures in the following award period any funds that have been awarded but are subsequently returned or recovered.

(2) An SEA may reserve for administrative costs or scholarship expenditures in the following award period any funds from its administrative cost allotment that remains unexpended at the end of the award period for which the funds were granted.

(Authority: 20 U.S.C. 1070d–33, 1070d–36, 1070d–38 to 1070d–40)

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federal register

Tuesday
June 20, 1989

Part V

The President

Proclamation 5992—National Scleroderma Awareness Week, 1989

Part V

The President

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Vol. 54, No. 117
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Presidential Documents

Title 3—

The President

Proclamation 5992 of June 16, 1989

National Scleroderma Awareness Week, 1989

By the President of the United States of America

A Proclamation

Each year, thousands of Americans suffer from a rare but serious disease known as scleroderma. We must call national attention to this mysterious ailment and the ongoing efforts to find a cure for it.

Scleroderma, which literally means "hard skin," is a painful and debilitating connective tissue disease characterized by excessive deposits of collagen in the skin. While the hallmark of this disease is skin thickening, scleroderma can affect other organs of the body, such as the stomach, lungs, heart, or kidneys.

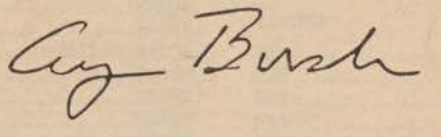
Although the disease can strike at any age, it usually affects people in their most productive years, and women more frequently than men. New research findings and new approaches to diagnosis and treatment are being developed to combat scleroderma. Studies on scleroderma include investigations into various causes of the disease, research on vascular alterations and regulation of collagen synthesis, and development of diagnostic probes. Such studies may lead to new and improved treatments that will effectively eliminate the disease itself.

In order for this work to continue and in order to take advantage of the knowledge we have already gained, public awareness of scleroderma and of the importance of scientific research must be increased. The Federal Government and private voluntary organizations are thus working together to promote education and research on scleroderma.

To enhance public understanding of scleroderma and to recognize the important efforts to combat this disease, the Congress, by House Joint Resolution 274, has designated the week beginning June 11, 1989, as "National Scleroderma Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning June 11, 1989, as National Scleroderma Awareness Week. I urge the people of the United States and educational, philanthropic, scientific, and medical organizations and professionals to participate in activities designed to further public awareness of the causes and treatment of scleroderma.

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



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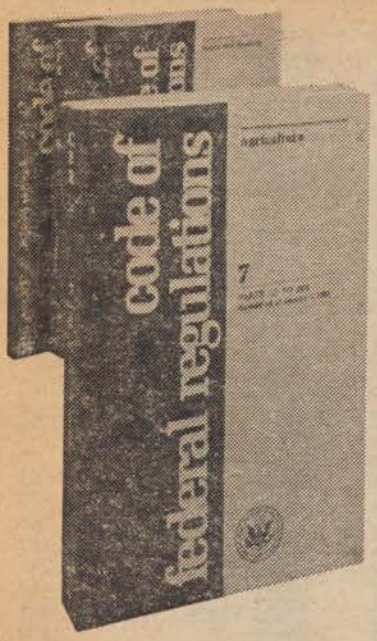
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